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**Robert
Schuman
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Advanced
Studies**



A Basic Treaty for the European Union

A study of the reorganisation of the Treaties

**Report submitted on 15 May 2000 to Mr Romano Prodi,
President of the European Commission**



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Printed in Italy, in May 2000

REORGANISATION OF THE EUROPEAN TREATIES

Final Report from the European University Institute, Florence¹

At the beginning of 2000, the European Commission entrusted the Robert Schuman Centre at the European University Institute in Florence with a feasibility study on „reorganising the treaties“ on which the European Union is based ². This mandate follows from the report of the group of Wise Men of 18 October 1999 ³ and is connected with an initial study done by the Robert Schuman Centre for the European Parliament ⁴. It entailed two operations.

The first operation was to reorganise the presentation and form of the treaties while best respecting the present legal position. The Commission invited us in this connection to restructure in a consistent way the whole of primary law, and to set out in a „Basic Treaty“ the fundamental features of the European Union. This operation has as its main objective in our view to clarify a body of complex rules for the benefit of the citizens of the Union and those of the candidate countries. It would have the further effect of enhancing legal certainty in respect of primary law, while endowing the Union with a document whose symbolic and identity-creating value would happily supplement the Charter of Fundamental Rights currently being elaborated by the Convention.

¹. An interim report was sent to the Commission on 6 March 2000.

². The group at the Robert Schuman Centre, representing various nationalities and legal cultures, was coordinated by Yves Mény and Claus-Dieter Ehlermann. The other group members are Grainne de Burca, Alan Dashwood, Renaud Dehousse, Bruno de Witte, Luis Diez-Picazo, Jean-Victor Louis, Francis Snyder, Antonio Tizzano, Armin von Bogdandy, Jacques Ziller. The group met several times in Florence and Brussels, with the participation of H.E. Ambassador Philippe de Schoutheete, special advisor to Michel Barnier, European Commissioner. Hervé Bribosia acted as rapporteur for the group.

³. “The Institutional Implications of Enlargement - Report to the European Commission”, published in *Europe*, 20 October 1999, Documents n°2159.

⁴. Parlement européen, Direction générale des Études, “Quelle Charte constitutionnelle pour l’Union européenne - Stratégies et options pour renforcer le caractère constitutionnel des traités”, Document de Travail, Série Politique, Poli 105 Fr.

The second operation is to render more flexible, albeit in certain cases only, the general treaty revision procedure in Article 48 of the Treaty on European Union. The unanimity principle and the need to complete national ratification procedures, which are sometimes very cumbersome, create the risk of paralysing the evolution of the Union, as the number of Member States will increase with the forthcoming enlargements.

There is of course some correspondence between the two operations. The fundamental nature of the provisions constituting the „Basic Treaty“ might in fact imply that further modifications of these (which would presumably happen less frequently) would always be subject to a stricter amendment procedure in which national governments and parliaments representing the interests of the States would predominate. Likewise, subjecting the other provisions of primary law, or at least some of them, to a more flexible and more *communautaire* revision procedure is an option which we will envisage.

However, the logic underlying the *communitarisation* of the treaty revision procedures and making them more flexible does not necessarily correspond with the more or less „fundamental“ nature of the provisions of primary law. Accordingly, the Schuman Centre group thought it preferable to develop in this report a draft Basic Treaty relatively independently of considerations associated with the revision procedure, and to give priority to the need for a more readable document setting out the principles governing the organisation, objectives and functioning of the European Union. The question of how to render the treaty amendment procedure more flexible will be dealt with in a separate report.

Finally, two documents showing the restructuring of the Treaties are annexed to this report :

Annex I contains the draft *Basic Treaty of the European Union* with two annexed Special Protocols corresponding to the Union's two intergovernmental pillars. This document is accompanied by all the explanations of a technical nature, indicating in particular the origin of the Clauses which are drawn from the current Treaties and, where necessary, the provisions which, with due respect for the law as it stands, are newly drafted (indicated in bold).

Annex II contains the draft *consolidated version of the Treaty establishing the European Community*, as it results from the transfer to the Basic Treaty of a number of its provisions. The same type of technical explanations as in Annex I appears in this document.

Finally, a separate Annex contains a version of the draft Basic Treaty rid of all technical explanations so as to allow for a better examination of its attractiveness.

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A BASIC TREATY FOR THE EUROPEAN UNION

Why a Basic Treaty ?

After forty years of integration efforts, it is hardly surprising that the primary law of the European Communities and the European Union should have come to include, in a non linear and increasingly complex way, a large number of original treaties with their successive revisions, acts of a similar nature, protocols and accession treaties. The legibility of these texts for the citizen has suffered a great deal, and so has legal certainty. It seems that lawyers do not usually refer to the original or revised texts, which are nonetheless the only authentically valid texts, and that they increasingly have recourse to unofficial consolidated versions. That is why a number of attempts have been made in recent years to put this multitude of texts in order by consolidating them consistently in a single document ⁵. The last Intergovernmental Conference certainly „simplified“ the treaties somewhat, but was unable to complete the consolidation work it had timidly begun ⁶.

Most of these attempts at consolidating the treaties are characterised by a long text encumbered with technical considerations associated with the restructuring operation, the added value of which in terms of legibility and legal certainty is slight. Drawing the lessons from these previous experiences, the group suggests, rather than retaining the entire mass of material in the texts of the primary law, that the best option is to extract the essential features and present the selected provisions consistently in a *Basic Treaty*.

⁵. Additionally, making a new start would enable the work of translating the original and revision treaties on the occasion of future accessions to be enormously reduced. Instead of translating the whole old legal infrastructure, now out of date following successive revisions, it would suffice to translate the consolidated version representing the current legal position. A synthesis of all the attempts at consolidating the founding treaties is given by Ch. Schmid, “Konsolidierung und Vereinfachung des europäischen Primärrechts - wissenschaftliche Modelle, aktueller Stand und Perspektiven”, in A. von Bogdandy and Claus-Dieter Ehlermann, *Konsolidierung und Kohärenz des Primärrechts nach Amsterdam*, Europarecht, Beiheft, 2, 1998, (see also Europäisches Parlament, Generaldirektion Wissenschaft, Reihe Rechtsfragen, JURI - 102 DE).

⁶. See the “final results of this technical work” recently presented by the Council General Secretariat “for illustrative purposes”, in accordance with Declaration n° 42 of the Amsterdam Treaty regarding consolidation of the treaties.

Selection of the treaties concerned : the Treaty on European Union and the Treaty establishing the European Community

The group felt it preferable to incorporate into the draft Basic Treaty only provisions that are currently in the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC). These are the two Treaties which contain the basic provisions relating to the architecture of the Union, on the one hand, and the essential features of the single institutional framework and of the Community system, on the other hand.

Moreover, it seemed inappropriate to include provisions of the ECSC Treaty, given that this treaty is due to expire shortly. Nor is it very likely that the special features of the ECSC will persist beyond the life of the treaty that established it. The question is certainly more delicate for the EAEC (Euratom) Treaty. The group decided not to take it into account for essentially two reasons. First, by contrast with the EC Treaty which has a general, horizontal purpose, the sectorial nature of the EAEC Treaty makes it less „fundamental“ in the integration process. This is especially so since its vitality in everyday practice, given the lack of consensus on the original objectives, is rather limited. Second, by leaving aside the EAEC Treaty (and *a fortiori* the ECSC Treaty) one avoids needlessly burdening the Basic Treaty with a number of special institutional features that would otherwise have to appear in it, and would thus impair the objective of being concise.

Form and content of the Basic Treaty

The Basic Treaty consists of eight titles, containing a total of 95 Clauses (some 70 Clauses in a shorter version, see *below*), each with a heading ⁷.

The **first three titles** contain the provisions relating to the foundations of the Union, the fundamental rights, and citizenship. The nature of these provisions is such that they ought to appear in the Basic Treaty, but they would no doubt have to be adjusted if the Fundamental Rights Charter, which is at present being elaborated, were to be integrated into the treaties.

Title IV of the Basic Treaty sets forth the specific objectives and activities of each of the Union's three pillars, along with some general principles governing relations between the Union (or the Community) and its Member States (subsidiarity, loyal cooperation etc.). The group felt it best to offer a choice between a short version of the Basic Treaty, keeping to these few clauses, and a long version which would add, within the Community pillar, five clauses concerning the internal market and its four freedoms, plus a score of clauses setting out in greater detail the objective of each of the actions pursued within the Community framework (see Clauses 21 - 45)⁸.

For its part, the group favoured the long version which better meets the concern to preserve three types of balance. First and foremost are the *grands équilibres* between the Community policies (internal market, common agricultural policy and economic and social cohesion; or also EMU and employment). Then comes the balance between the substantive law and institutional law of the European Union. Finally, there is the balance between Community activities ? which constitute the core of European integration ? and intergovernmental cooperation within the Union's other two pillars.

However, we felt it impossible to make an objective selection of policies worth presenting in more detail, with other policies being excluded. Consequently, all policies are included following roughly the order of presentation in the current TEC. Additionally, the presentation of each policy lengthens the Basic Treaty as a whole and does not bring out the relative weight of each Community policy, thus placing almost on the same footing the common policies and the policies strongly marked by the subsidiarity principle (education, culture, etc.).

The long version also entails a difficulty in selecting the relevant fundamental provisions for each separate policy. Our course of action was not to choose operational legal bases, but rather provisions which clarify the objectives of the Community's activities. The selection and rearrangement of existing texts even proved impossible in the case of the „common rules on competition“ (Clause 29), and in the case of the „conditions and limitations to free

⁷. The term “Clause” has been adopted in order to distinguish the provisions of the Basic Treaty from those of the other treaties.

⁸. These actions are enumerated in a list in Clause 18, and therefore in the short version too.

movement“ (Clause 26) : in these cases a very general provision was drafted anew, referring to the relevant provisions of the TEC.

Should these drawbacks be felt to outweigh the advantages of the long version, it will still be possible to opt for the short version (thus excluding Clauses 21 - 45). This would be a Basic Treaty radically directed towards the future, favouring the Union’s political and institutional form over the „substantive“ activities it carries out, and accordingly coming closer to the classical type of constitutional document.

Title V of the Basic Treaty concerns the institutional provisions. We have systematically favoured the rules on the composition of the institutions (to the extent that it determines their nature), on the functions of the institutions within each of the pillars, and where appropriate the voting procedures. This means we have not included the provisions which primarily concern the organisation and internal functioning of the institutions. These provisions do not seem to fit in the Basic Treaty.

In addition, we have not included in the Basic Treaty the provisions specifying the decision-making procedures, whether set out in general terms (cooperation, codecision, conclusion of international agreements, etc.) or contained within each operational legal basis. The technical nature of these procedures would considerably burden the Basic Treaty, and selecting among them proved impossible. Moreover, they reflect an institutional balance which is likely to continue evolving. In view of their specific nature, however, we included the general procedures for revision or accession, as well as the special revision procedures constituting variants, of limited scope, of the classical IGC ⁹. By contrast, we chose not to include Article 308 TEC (formerly Article 235) relating to the „residual powers“, which has the character of a legal basis for legislation.

We contemplated the possibility of bringing together in a separate part of the Basic Treaty three clauses on „Acts of the Union“, corresponding to the instruments specific to each pillar. After consideration, we felt that, like the decision-making procedures, the typology of acts is

⁹. See Clause 3, paragraph 2 (Article 22 TEC – extending citizenship rights), Clause 47, paragraph 1 (Article 17, (1) TEU - common defence policy), Clause 49, paragraph 2 (Article 42 TEU - “*communitarisation*” of the third

of a technical nature making it inappropriate for inclusion in the Basic Treaty. It may be added that presenting the Union's legal instruments might have the effect of leading readers of the Basic Treaty into error. This is partly because the exact legal scope of these instruments – particularly in the case of the directive - is intimately associated with the case law, and increasing use is made of *actes atypiques* which do not appear in the official typology.

Finally, the **last three titles** correspond respectively to financial provisions, provisions on enhanced cooperation and the final provisions.

Relations between the Basic Treaty and the other Treaties and protocols¹⁰

The leading idea running through our draft consists in replacing the Treaty on European Union signed in Maastricht and amended by the Amsterdam Treaty with the Basic Treaty *of* the European Union. Apart from Articles 8, 9 and 10 TEU¹¹, all the provisions of the current TEU can be found either in the body of the Basic Treaty itself, or in one of the two Special Protocols annexed to the Basic Treaty, one on common foreign and security policy, the other on police and judicial cooperation in criminal matters. Moreover, on the model of the present TEU, the Basic Treaty has the features of a framework treaty covering all the activities of the Union, whether in the Community pillar or in the intergovernmental pillars. In this respect the preamble and certain initial and final provisions of the Basic Treaty reproduce the basic structure of the TEU.

This approach has the advantage of eliminating the potentially confusing hybrid nature of the present TEU. It also makes it possible to highlight the essential features of the Union, while restructuring and consolidating the provisions of the TEU and its later amendments in a new document. Finally, it enables us to avoid superimposing the „Basic Treaty“ in a clumsy way on a „Treaty on European Union“, if the latter continued to exist.

pillar), Clause 56, paragraph 2 (Article 190 (4) TEC - uniform procedure for elections to the European Parliament), Clause 82, paragraph 2 (Article 269 TEC - own resources system).

¹⁰. See Clause 88 of the Basic Treaty.

¹¹. Articles 8, 9 and 10 TEU contain amendments to the Community treaties. These amending provisions can disappear if legal force is conferred on the consolidated versions of the Community treaties.

RSCAS-EUI (European Treaties 2000)

As for the Treaty establishing the European Community, one should start by recognising the full legal force of the consolidated version annexed to the Final Act of the Amsterdam Treaty, if only to avoid having to refer to the numerous successive amendments to the original Treaty of Rome. Then, all the provisions of the consolidated version of the TEC reproduced (identically or analogously) in the Basic Treaty are to be repealed from the consolidated version.

The fate of the protocols currently annexed to the TEU and TEC follows logically from these operations. Thus, all the protocols annexed to the TEU will henceforth be annexed to the Basic Treaty. And all protocols annexed to the TEC will henceforth be annexed not only to the consolidated version of the TEC, but also to the Basic Treaty itself, given that certain provisions of the TEC have been incorporated into it.

At one point, the group contemplated taking a further step in the restructuring of primary law, for instance by consolidating the provisions kept in the TEC (and even the other two Community treaties) in a Special Protocol annexed to the Basic Treaty, on the same level as the two other Special Protocols. This would have resulted in a single instrument, the Basic Treaty, and the three attached Special Protocols corresponding to the three pillars. However, apart from the fact that this sort of operation would present additional technical difficulties (particularly for the cross-referencing system), it is undoubtedly important, if only symbolically, not to abrogate the Treaty of Rome. More generally, a total recasting of primary law would be more justified and more easily achieved in the context of a fundamental substantive reform than in the present context of working with the law as it stands.

A Basic Treaty founded on the law as it stands

As we indicated in the introduction, the group's terms of reference were to show whether it was possible to consolidate and restructure the treaties without departing from the present legal position.

As long as one does not adopt an over-restrictive conception of the notion of „the law as it stands“, we feel we have respected this constraint. It is true that the mere fact of changing the environment of texts and restructuring them can have consequences in terms of their interpretation. This risk is inherent in our undertaking. That is why the group initially imagined drafting the Basic Treaty without touching the current treaties : the treaties would, as it were, have been duplicated. In other words, all the provisions appearing in the Basic Treaty would have been retained in the treaties from which they were taken. This solution might have raised delicate legal questions as to the relations between the new Basic Treaty and the existing treaties. Primary law would probably have been complicated rather than simplified as a result. What would have been gained in terms of „the law as it stands“ would have been lost in terms of clarity and legal certainty. Having said that, a document of this nature, devoid of legal force, might still serve as a model on the basis of which a more fundamental reform of the treaties could be developed.

The provisions of the Basic Treaty, presented in this report, are not all entirely identical with the articles in the current TEU or TEC which they replace. The wording of the new texts is not always limited to recreating a link between separate provisions or filling a gap of a syntactical nature : sometimes the newly drafted text consolidates, synthesises or rearranges the provisions replaced (see e.g. Clauses 12 and 13 relating to the Ombudsman and the use of languages or Clause 61 on the Council’s powers in each of the pillars). But the group always took care when changing the letter of the text not to change the present legal position, in particular as regards the division of powers between the Union (or Community) and its Member States. Likewise, although the Union’s pillar structure reduces legibility and complicates the restructuring of the treaties, it has been reproduced as faithfully as possible in the Basic Treaty.

Finally, the group did not wish to incorporate the case law of the Court of Justice into the Basic Treaty (nor the consolidated version of the TEC) even where this might help to illuminate the real scope of a provision. This is a another issue, which did not fall within the framework of our terms of reference.

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At the conclusion of this study, the group is convinced that a limited recasting of the essential provisions of primary law in a Basic Treaty can be achieved while best respecting the present legal and institutional position. This sort of operation is worth carrying out, both to reduce the complexity of the founding texts and to endow the Union and its (future) citizens with an accessible document. If the Fundamental Rights Charter were incorporated as well, there is no doubt that this document would have a symbolic and identity-creating value that could bring the European integration process closer to civil society.



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ANNEX I

BASIC TREATY OF THE EUROPEAN UNION

AND TWO ANNEXED SPECIAL PROTOCOLS

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BASIC TREATY OF THE EUROPEAN UNION

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Preamble²

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,

DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

RESOLVED to establish a citizenship common to nationals of their countries,

¹ . The Basic Treaty of the European Union – hereinafter “the Basic Treaty” – would replace the present Treaty on the European Union. See Clause 88. **New texts are in bold**

² . Preamble of the Treaty on the European Union. An alternative would be to merge and consolidate it with the preamble of the TEC (see the model suggested by the Secretariat general of the Council).

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article 17, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty,

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,

IN VIEW of further steps to be taken in order to advance European integration,

DESIRING to make the institutional structure of the Union, its principles and its objectives more coherent and more accessible to its citizens and to the world Community

*HAVE DECIDED to **provide the European Union and its citizens with the following Basic Treaty**, and to this end have designated as their Plenipotentiaries :*

...

TITLE I . — FOUNDATIONS OF THE UNION

CLAUSE 1 : The European Union ³

The European Union established by THE HIGH CONTRACTING PARTIES marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The European Union, hereinafter called "the Union", shall be founded on the European Communities, supplemented by a common foreign and security policy and a police and judicial cooperation in criminal matters. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

CLAUSE 2 : Principles of the Union

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States. ⁴

2. The Union shall respect the national identities of its Member States. ⁵

CLAUSE 3 : General objectives of the Union

1. The Union shall set itself the following objectives ⁶ :

– to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of **the Treaties** ⁷;

– to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of **Clause 47**;

– to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

³. Rewriting of ARTICLE 1, paragraphs 2 and 3 (ex Article A) TEU.

⁴. ARTICLE 6 (1) (ex Article F) TEU

⁵. ARTICLE 6 (3) (ex Article F) TEU

⁶. ARTICLE 2 (ex Article B) TEU

⁷. The notion of "Treaties" is defined in Clause 88.

– to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;

– to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent **the common foreign and security policy and the police and judicial cooperation in criminal matters** may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in **Clause 16**.

2. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.⁸

TITLE II. ? FUNDAMENTAL RIGHTS⁹

CLAUSE 4 : Fundamental rights¹⁰

The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

CLAUSE 5 : Non discrimination¹¹

The Council may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in accordance with Article 13 of the Treaty establishing the European Community

⁸. ARTICLE 6 (4) (ex Article F) TEU.

⁹. The content of this title may be influenced by the adoption of the Charter of Fundamental rights which is being established by the “Convention”.

¹⁰. ARTICLE 6, (2) (ex Article F) TEU.

¹¹. Rewriting of ARTICLE 13 (ex Article 6a) TEC.

TITLE III. — CITIZENSHIP OF THE UNION ¹²

CLAUSE 6 : Citizenship of the Union ¹³

1. Citizenship of the Union is established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

Citizens of the Union shall enjoy the rights conferred by **the Treaties** and shall be subject to the duties imposed thereby.

2. **On the basis of the report referred to in Article 22 of the Treaty establishing the European Community**, and without prejudice to the other provisions of **the said Treaty**, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to strengthen or to add to the rights laid down **in this Title**, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. ¹⁴

CLAUSE 7 : Non discrimination on grounds of nationality ¹⁵

Within the scope of application of **the Treaty establishing the European Community**, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council may adopt rules designed to prohibit such discrimination **in accordance with Article 12 of the said Treaty**.

CLAUSE 8 : Freedom of movement and residence ¹⁶

Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in **the Treaty establishing the European Community** and by the measures adopted to give it effect.

The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1 **in accordance with Article 18 of the said Treaty**.

CLAUSE 9 : Electoral rights

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections

¹² . The content of this title may be influenced by the adoption of the Charter of Fundamental rights which is being established by the “Convention”.

¹³ . ARTICLE 17 (ex Article 8) TEC.

¹⁴ . ARTICLE 22, paragraph 2 (ex Article 8e) TEC.

¹⁵ . ARTICLE 12 (ex Article 6) TEC.

¹⁶ . ARTICLE 18 (1) and (2), selected parts, (ex Article 8a) TEC.

in the Member State in which he resides, under the same conditions as nationals of that State. ¹⁷

Without prejudice to **Clause 56, § 2** and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. ¹⁸

The electoral rights referred to in this paragraph shall be exercised subject to detailed arrangements adopted by the Council **in accordance with Article 19 of the Treaty establishing the European Community.** ¹⁹

2. Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union. ²⁰

CLAUSE 10 : Diplomatic protection ²¹

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.

CLAUSE 11 : Petition ²²

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly.

CLAUSE 12 : Ombudsman ²³

Every citizen of the Union **or any natural or legal person residing or having its registered office in a Member State** may apply to the Ombudsman. The Ombudsman

¹⁷ . ARTICLE 19 (1) first sentence (ex Article 8b) TEC

¹⁸ . ARTICLE 19 (2) first sentence (ex Article 8b) TEC.

¹⁹ . Consolidation of ARTICLE 19 (1) second sentence and (2) second sentence (ex Article 8b) TEC

²⁰ . ARTICLE 191 (ex Article 138a) TEC.

²¹ . ARTICLE 20 (ex Article 8c) TEC.

²² . Consolidation of ARTICLE 21, paragraph 1(ex Article 8d) and ARTICLE 194 (ex Article 138d) TEC

²³ . Consolidation of ARTICLE 21, paragraph 2 (ex Article 8d) and ARTICLE 195 (1), paragraph 1 (ex Article 138e) TEC.

is empowered to receive complaints concerning instances of maladministration in the Community activities of the institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

CLAUSE 13 : Language ²⁴

Every citizen of the Union may, **within the framework of the Treaty establishing the European Community**, write to **the European Parliament and its Ombudsman, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of Regions** in one of the languages mentioned in Article 314 **of the said Treaty** and have an answer in the same language.

CLAUSE 14 : Access to documents ²⁵

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with **Article 255 (2) and (3) of the Treaty establishing the European Community**.

TITLE IV. — OBJECTIVES AND ACTIVITIES OF THE UNION

I. ? Within the framework of the European Community

CLAUSE 15 : Objectives of the European Community ²⁶

The **European** Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in **Clauses 18 and 19** to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

CLAUSE 16 : Subsidiarity ²⁷

The **European** Community shall act within the limits of the powers conferred upon it by **the Treaty establishing the European Community** and of the objectives assigned to it therein.

²⁴ . Rewriting of ARTICLE 21, paragraph 3 (ex Article 8d) TEC.

²⁵ . ARTICLE 255 (1) (ex Article 191a) TEC.

²⁶ . ARTICLE 2 (exArticle 2) TEC.

²⁷ . ARTICLE 5 (ex Article 3b) TEC. The group suggests that this Clause extend to the whole Union.

In areas which do not fall within its exclusive competence, the **European** Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the **European** Community.

Any action by the **European** Community shall not go beyond what is necessary to achieve **its** objectives.

CLAUSE 17 : Sincere cooperation ²⁸

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the **Treaty establishing the European Community** or resulting from action taken by the institutions of the **European** Community. They shall facilitate the achievement of the Community's tasks.

They shall abstain from any measure which could jeopardise the attainment of the objectives of **the European Community**.

CLAUSE 18 : Activities of the European Community

1. For the purposes set out in **Clause 15** the activities of the **European** Community shall include, as provided in **the Treaty establishing the European Community** and in accordance with the timetable set out therein : ²⁹

- (a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
- (b) a common commercial policy;
- (c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
- (d) measures concerning the entry and movement of persons as provided for in **Clause 31 and** in Title IV of **Part three of the said Treaty**;
- (e) a common policy in the sphere of agriculture and fisheries;
- (f) a common policy in the sphere of transport;
- (g) a system ensuring that competition in the internal market is not distorted;

²⁸. ARTICLE 10 (ex Article 5) TEC. The group suggests that this Clause extend to the whole Union.

²⁹. ARTICLE 3 (exArticle 3) TEC.

- (h) the approximation of the laws of Member States to the extent required for the functioning of the common market;
- (i) the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment;
- (j) a policy in the social sphere comprising a European Social Fund;
- (k) the strengthening of economic and social cohesion;
- (l) a policy in the sphere of the environment;
- (m) the strengthening of the competitiveness of Community industry;
- (n) the promotion of research and technological development;
- (o) encouragement for the establishment and development of trans-European networks;
- (p) a contribution to the attainment of a high level of health protection;
- (q) a contribution to education and training of quality and to the flowering of the cultures of the Member States;
- (r) a policy in the sphere of development cooperation;
- (s) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;
- (t) a contribution to the strengthening of consumer protection;
- (u) measures in the spheres of energy, civil protection and tourism.

In all the activities referred to in this **Clause**, the **European** Community shall aim to eliminate inequalities, and to promote equality, between men and women.

2. Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in **paragraph 1**, in particular with a view to promoting sustainable development.³⁰

CLAUSE 19 : Economic and Monetary Union ³¹

1. For the purposes set out in **Clause 15**, the activities of the Member States and the **European** Community shall include, as provided **in the Treaty establishing the European Community** and in accordance with the timetable and the procedures set

³⁰ . ARTICLE 6 (ex Article 3c) TEC.

³¹ . ARTICLE 4 (ex Article 3a) TEC.

out, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

2. Concurrently with the foregoing, as provided **in the said Treaty** and in accordance with the timetable and the procedures set out, these activities shall include the irrevocable fixing of exchange rates leading to the introduction of a single currency, the **Euro**, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the **European** Community, in accordance with the principle of an open market economy with free competition.

3. These activities of the Member States and the **European** Community shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

CLAUSE 20 : Services of general economic interest ³²

Without prejudice to **the rules governing State aids provided in** Articles 73, 86 and 87 of **the Treaty establishing the European Community**, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of **the said Treaty**, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.

CLAUSE 21 : Internal Market ³³

1. **The Community shall adopt measures with the aim of establishing the internal market, in accordance with this Clause and the provisions of the Treaty establishing the European Community.**

2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of **the Treaty establishing the European Community**.

CLAUSE 22 : Free movement of goods

1. The **European** Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and

³². ARTICLE 16 (ex Article 7d) TEC.

³³. Rewriting of ARTICLE 14 (1) TEC and ARTICLE 14 (2) (ex Article 7a) TEC.

the adoption of a common customs tariff in their relations with third countries.³⁴

2. Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.³⁵

3. Quantitative restrictions on imports **and exports**, and all measures having equivalent effect shall be prohibited between Member States.³⁶

4. The provisions of **paragraphs 2 and 3 and of Articles 30 and 31 of the Treaty establishing the European Community** shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.³⁷

CLAUSE 23 : Free movement of persons

1. Freedom of movement for workers shall be secured within the **European Community**.

Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.³⁸

2. Restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48 **of the Treaty establishing the European Community**, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter **of the said Treaty** relating to capital.³⁹

CLAUSE 24 : Free movement of services⁴⁰

Restrictions on freedom to provide services within the **European Community** shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

³⁴ . ARTICLE 23 (1) (ex Article 9) TEC.

³⁵ . ARTICLE 25 (ex Article 12) TEC.

³⁶ . Consolidation of ARTICLE 28 (ex Article 30) and ARTICLE 29 (ex Article 34) TEC.

³⁷ . ARTICLE 23 (2) (ex Article 9) TEC.

³⁸ . ARTICLE 39 (1) et (2) (ex Article 48) TEC.

³⁹ . ARTICLE 43 (ex Article 52) TEC.

⁴⁰ . ARTICLE 49, paragraph 1 (ex Article 59) TEC

CLAUSE 25 : Free movement of capital and payments ⁴¹

All restrictions on the movement of capital **and on payments** between Member States and between Member States and third countries shall be prohibited.

CLAUSE 26 : Conditions and limitations to free movement ⁴²

The foregoing provisions on free movement are to be applied within the framework of the provisions set out in the Treaty establishing the European Community and subject to the conditions and limitations provided for therein.

CLAUSE 27 : Common agricultural policy ⁴³

1. The objectives of the common agricultural policy shall be:

- (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- (c) to stabilise markets;
- (d) to assure the availability of supplies;
- (e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

- (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
- (b) the need to effect the appropriate adjustments by degrees;
- (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

CLAUSE 28 : Transport

1. The objectives **the European Community** shall be pursued by Member States within the framework of a common transport policy. ⁴⁴

⁴¹ . Consolidation of ARTICLE 56 (1) and (2) (ex Article 73b) TEC

⁴² . New provision.

⁴³ . ARTICLE 33 (ex Article 39) TEC.

2. For **that** purpose, and taking into account the distinctive features of transport, the Council shall lay down, **in accordance with article 71 of the Treaty establishing the European Community** :⁴⁵

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) measures to improve transport safety;
- (d) any other appropriate provisions.

CLAUSE 29 : Common rules on competition⁴⁶

In view of ensuring that competition in the internal market is not distorted, there shall be common rules on competition applying to undertakings and concerning aids granted by states, in accordance with articles 81 to 89 of the Treaty establishing the European Community.

CLAUSE 30 : Common commercial policy

1. By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.

The common commercial policy **of the European Community** shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.⁴⁷

2. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.⁴⁸

CLAUSE 31 : Visas, asylum, immigration and other policies related to free movement of persons⁴⁹

⁴⁴ . ARTICLE 70 (ex Article 74) TEC (selected parts).

⁴⁵ . ARTICLE 71 (1) (ex Article 75) TEC.

⁴⁶ . New provision. Comp. Article 3 (1), g) TEC.

⁴⁷ . ARTICLE 131 (ex Article 110) TEC.

⁴⁸ . ARTICLE 133 (1) (ex-Article 113) TEC.

⁴⁹ . ARTICLE 61 (ex Article 73i) TEC.

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

- (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with **Clause 21**, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a) **of the Treaty establishing the European Community**, and measures to prevent and combat crime in accordance with the provisions of *Article 31(e)* of **the annexed Special Protocol on police and judicial cooperation in criminal matters** ;
- (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63 **of the Treaty establishing the European Community**;
- (c) measures in the field of judicial cooperation in civil matters as provided for in Article 65 **of the said Treaty**;
- (d) appropriate measures to encourage and strengthen administrative cooperation, as provided for in Article 66 **of the said Treaty**;
- (e) measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions **of this Treaty and the annexed Special Protocol on police and judicial cooperation in criminal matters**.

CLAUSE 32 : Economic policy ⁵⁰

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the **European** Community, as defined in **Clause 15**, and in the context of the broad guidelines referred to in Article 99(2) **of the Treaty establishing the European Community**. The Member States and the Community shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in **Clause 19**.

CLAUSE 33 : Monetary policy ⁵¹

The primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the **European** Community with a view to contributing to the achievement of the objectives of the Community as laid down in **Clause 15**. The ESCB shall act in accordance with the principle of an open market economy with free

⁵⁰. ARTICLE 98 (ex Article 102a) TEC.

⁵¹. ARTICLE 105 (1) (ex Article 105) TEC.

competition, favouring an efficient allocation of resources, and in compliance with the principles set out in **Clause 19**.

CLAUSE 34 : Employment ⁵²

Member States and the **European Community** shall, in accordance with **Title VIII of Part three of the Treaty establishing the European Community**, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in **Clauses 3 and 15**.

CLAUSE 35 : Social policy ⁵³

The **European Community** and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the **European Community** and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the **European Community** economy.

Such a development will ensue not only from the functioning of the common market, which will favour the harmonisation of social systems, but also from the procedures provided for in **the Treaty establishing the European Community** and from the approximation of provisions laid down by law, regulation or administrative action.

CLAUSE 36 : Education, vocational training and youth

1. The **European Community** shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. ⁵⁴

2. The **European Community** shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting

⁵² . ARTICLE 125 (ex Article 109n) TEC.

⁵³ . ARTICLE 136 (ex Article 117) TEC.

⁵⁴ . ARTICLE 149 (1) (ex Article 126) TEC.

the responsibility of the Member States for the content and organisation of vocational training.⁵⁵

CLAUSE 37 : Culture⁵⁶

1. The **European** Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. The **European** Community shall take cultural aspects into account in its action under other provisions of **the Treaty establishing the European Community**, in particular in order to respect and to promote the diversity of its cultures.

CLAUSE 38 : Environment

1. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the **European** Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.⁵⁷

2. Community policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or worldwide environmental problems.⁵⁸

CLAUSE 39 : Public health⁵⁹

A high level of human health protection shall be ensured in the definition and implementation of all **European** Community policies and activities.

Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

⁵⁵ . ARTICLE 150 (1) (ex Article 127) TEC.

⁵⁶ . ARTICLE 151 (1) and (4) (ex Article 128) TEC.

⁵⁷ . ARTICLE 174 (2) paragraph 1 TEC

⁵⁸ . ARTICLE 174 (1) (ex Article 130 r) TEC.

⁵⁹ . ARTICLE 152 (1) (ex Article 129) TEC.

The **European** Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

CLAUSE 40 : Consumer protection ⁶⁰

In order to promote the interests of consumers and to ensure a high level of consumer protection, the **European** Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

Consumer protection requirements shall be taken into account in defining and implementing other **European** Community policies and activities.

CLAUSE 41 : Trans-european networks ⁶¹

To help achieve the objectives referred to in **Clauses 21 and 43 paragraph 1** and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the **European** Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

CLAUSE 42 : Industry ⁶²

1. The **European** Community and the Member States shall ensure that the conditions necessary for the competitiveness of the Community's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

- speeding up the adjustment of industry to structural changes;
- encouraging an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium-sized undertakings;
- encouraging an environment favourable to cooperation between undertakings;
- fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The **European** Community shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of **the Treaty establishing the European Community, in accordance with Article 157 (3) of the said Treaty.**

Title XVI of the third part of the said Treaty shall not provide a basis for the introduction by the **European** Community of any measure which could lead to a

⁶⁰ . ARTICLE 153 (1) and (2) (ex Article 129a) TEC.

⁶¹ . ARTICLE 154 (1) (ex Article 129b) TEC.

⁶² . ARTICLE 157 (1) and (3), except for the procedure (ex Article 130) TEC.

distortion of competition.

CLAUSE 43 : Economic and social cohesion

1. In order to promote its overall harmonious development, the **European Community** shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.

In particular, the **European Community** shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.⁶³

2. Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in **paragraph 1 of this Clause**. The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in **paragraph 1 of this Clause** and shall contribute to their achievement. The **European Community** shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments.⁶⁴

CLAUSE 44 : Research and technological development⁶⁵

The **European Community** shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other Chapters of **the Treaty establishing the European Community**.

For this purpose the **European Community** shall, throughout the Community, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.

CLAUSE 45 : Development cooperation

1. **The European Community** policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:

⁶³ . ARTICLE 158 (ex Article 130a) TEC.

⁶⁴ . ARTICLE 159, paragraph 1 (ex Article 130b) TEC.

⁶⁵ . ARTICLE 163 (1) and (2) (ex Article 130 F) TEC.

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them;
- the smooth and gradual integration of the developing countries into the world economy;
- the campaign against poverty in the developing countries.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.⁶⁶

2. The **European** Community shall take account of the objectives referred to in **this Clause** in the policies that it implements which are likely to affect developing countries.⁶⁷

II. — Within the framework of common foreign and security policy

CLAUSE 46 : Common foreign and security policy⁶⁸

The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

CLAUSE 47 : Common defence policy⁶⁹

1. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, in accordance with the second subparagraph, which might lead to a common defence,

⁶⁶ . ARTICLE 177 (1) and (2) (ex Article 130u) TEC.

⁶⁷ . ARTICLE 178 (ex Article 130v) TEC.

⁶⁸ . ARTICLE 11 (1) (ex Article J.1) TEU.

⁶⁹ . ARTICLE 17 (1), (2), (3) first sentence, and (4) (ex Article J.7) TEU

should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The Western European Union (WEU) is an integral part of the development of the Union providing the Union with access to an operational capability notably in the context of paragraph 2. It supports the Union in framing the defence aspects of the common foreign and security policy as set out in this Article. The Union shall accordingly foster closer institutional relations with the WEU with a view to the possibility of the integration of the WEU into the Union, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this **Clause** shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.

2. Questions referred to in this **Clause** shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

3. The Union will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications, **in accordance with Article 17 of the annexed Special Protocol on common foreign and security policy.**

4. The provisions of this **Clause** shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the WEU and the Atlantic Alliance, provided such cooperation does not run counter to or impede that provided for **in this Treaty and the annexed Special Protocol on common foreign and security policy.**

CLAUSE 48 : Loyalty and solidarity⁷⁰

The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council shall ensure that these principles are complied with.

⁷⁰ . ARTICLE 11 (2) (ex Article J.1) TEU.

III. — Within the framework of police and judicial cooperation in criminal matters

CLAUSE 49 : Police and judicial cooperation in criminal matters⁷¹

1. Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

— closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of *Articles 30 and 32 of the annexed Special Protocol on police and judicial cooperation in criminal matters*;

— closer cooperation between judicial and other competent authorities of the Member States in accordance with the provisions of *Articles 31(a) to (d) and 32 of the said Protocol*;

— approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of *Article 31(e) of the said Protocol*.

2. The Council, acting unanimously on the initiative of the Commission or a Member State, and after consulting the European Parliament, may decide that action in areas referred to in **paragraph 1** shall fall under Title IV of **Part Three** of the Treaty establishing the European Community, and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements.⁷²

TITLE V. — INSTITUTIONAL PROVISIONS

CLAUSE 50 : Single institutional framework of the Union⁷³

The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.

The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies.

⁷¹ . ARTICLE 29 (ex Article K.1) TEU.

⁷² . ARTICLE 42 (ex Article K.14) TEU.

⁷³ . ARTICLE 3 (ex Article C) TEU.

The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers.

CLAUSE 51 : The European Council ⁷⁴

The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.

The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

CLAUSE 52 : Institutions ⁷⁵

1. The tasks entrusted to the **Union** shall be carried out by the following institutions :

- **The EUROPEAN PARLIAMENT,**
- **The COUNCIL,**
- **The COMMISSION,**
- **The COURT OF JUSTICE,**
- **The COURT OF AUDITORS.**

2. **In the tasks entrusted to the European Community,** the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

CLAUSE 53 : Principle of attribution of powers ⁷⁶

The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for **by the Treaties.**

⁷⁴. ARTICLE 4 (ex Article D) TEU.

⁷⁵. Consolidation of ARTICLE 5 (ex Article E) TEU and of ARTICLE 7 (ex Article 4) TEC.

⁷⁶. Consolidation of ARTICLE 5 (ex Article E) TEU and Article 7 (1) last sentence (ex Article 4) TEC.

CLAUSE 54 : The European System of Central Banks and the European Central Bank ⁷⁷

A European System of Central Banks (hereinafter referred to as "ESCB") and a European Central Bank (hereinafter referred to as "ECB") shall act within the limits of the powers conferred upon them by **the Treaty establishing the European Community** and by the Statute of the ESCB and of the ECB (hereinafter referred to as "Statute of the ESCB") annexed thereto.

CLAUSE 55 : The European Investment Bank ⁷⁸

A European Investment Bank shall act within the limits of the powers conferred upon it by **the Treaty establishing the European Community** and the Statute annexed thereto.

I. — The European Parliament

CLAUSE 56 : Composition ⁷⁹

1. The European Parliament shall consist of representatives of the peoples of the States brought together in the Union ⁸⁰. **The representatives shall be elected by direct universal suffrage for a term of five years** ⁸¹.

2. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements ⁸².

3. The number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the European Union. The number of Members of the European Parliament shall not exceed seven hundred. ⁸³

4. The European Parliament shall elect its President and its officers from among its

⁷⁷ . Simplification of ARTICLE 8 (ex Article 4a) TEC

⁷⁸ . Simplification of ARTICLE 9 (ex Article 4b) TEC

⁷⁹ . Consolidation of selected parts of ARTICLE 189 (ex Article 137) TEC and ARTICLE 190 (ex Article 138) TEC

⁸⁰ . ARTICLE 189, paragraph 1 TEC. The composition of the European Parliament, as of the other institutions or bodies, is unique. It does not vary according the pillar within which it intervenes.

⁸¹ . Consolidation of ARTICLE 190 (1) and (3) TEC.

⁸² . ARTICLE 190 (4) TEC.

⁸³ . Consolidation of ARTICLE 190 (2), paragraph 1 and ARTICLE 189, paragraph 2 TEC

Members.⁸⁴

CLAUSE 57 : Functions

1. Insofar as provided in **the Treaty establishing the European Community**, the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the **co-decision and cooperation** procedures laid down in Articles 251 and 252 **of the said Treaty** and by giving its assent or delivering advisory opinions.

The European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing **the said Treaty**.⁸⁵

2. The Presidency **of the Council** shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.⁸⁶

3. The Council shall consult the European Parliament before adopting any measure referred to in *Article 34(2)(b), (c) and (d) of the annexed Special Protocol on police and judicial cooperation in criminal matters*. The European Parliament shall deliver its opinion within a time-limit which the Council may lay down, which shall not be less than three months. In the absence of an opinion within that time-limit, the Council may act.

The Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by **police and judicial cooperation in criminal matters**.⁸⁷

CLAUSE 58 : Motion of censure⁸⁸

If a motion of censure on the **European Community** activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with Article 214 **of the Treaty**

⁸⁴ . ARTICLE 197, paragraph 1 (ex Article 140) TEC.

⁸⁵ . ARTICLE 192 (ex Article 138b) TEC.

⁸⁶ . ARTICLE 21, paragraph 1(ex Article J.11) TEU

⁸⁷ . ARTICLE 39 (1) and (2) (ex Article K.11) TEU

⁸⁸ . ARTICLE 201 (ex Article 144) TEC.

establishing the European Community. In this case, the term of office of the Members of the Commission appointed to replace them shall expire on the date on which the term of office of the Members of the Commission obliged to resign as a body would have expired.

CLAUSE 59 : Voting ⁸⁹

Save as where the European Parliament is required to act by an absolute majority of its members or otherwise provided, the European Parliament shall act by an absolute majority of the votes cast.

II. ? The Council

CLAUSE 60 : Composition and presidency ⁹⁰

The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.

The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously.

CLAUSE 61 : Functions ⁹¹

1. To ensure that the objectives set out in **the Treaty establishing the European Community** are attained the Council shall :

- ensure coordination of the general economic policies of the Member States;
- have power to take decisions;
- confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament. ⁹²

2. **With regard to the common foreign and security policy the Council shall :**
⁹³

⁸⁹. Rewriting of ARTICLE 198 (ex Article 141) TEC.

⁹⁰. ARTICLE 203 (ex Article 146) TEC.

⁹¹. Rewriting in Clause 61, §§ 2 and 3.

⁹². ARTICLE 202 (ex Article 145) TEC.

⁹³. ARTICLE 13 (3) (ex Article J.3) TUE.

- take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council.
- shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions.
- shall adopt joint actions and common positions, as defined in *Articles 14 and 15* of the annexed Special Protocol on common foreign and security policy. ⁹⁴

The Council shall ensure the unity, consistency and effectiveness of action by the Union.

3. With regard to police and judicial cooperation in criminal matters, the Council shall take measures and promote cooperation, using the appropriate form and procedure set out in Clause 49 and in the annexed Special Protocol on police and judicial cooperation in criminal matters, contributing to the pursuit of the objectives of the Union. ⁹⁵

In particular, the Council shall, in accordance with *Article 34* of the said Special Protocol :

- adopt common positions, framework decisions, and other decisions for purposes consistent with the objectives of Clause 49, § 1, excluding any approximation of the laws and regulations of the Member States. ⁹⁶
- establish conventions. ⁹⁷

The Council shall promote cooperation through Europol, in accordance with *Article 30* of the said Special Protocol. ⁹⁸

Member States shall inform and consult one another within the Council with a view to coordinating their action. ⁹⁹

4. The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. ¹⁰⁰

⁹⁴ . Consolidation of ARTICLE 14 (1) first sentence (ex Article J.4) TEU , and ARTICLE 15 (1) first sentence (ex Article J.5) TEU.

⁹⁵ . ARTICLE 34 (1) (ex Article K.6) TEU.

⁹⁶ . ARTICLE 34 (2), (a), (b), (c) TEU.

⁹⁷ . ARTICLE 34 (2), (d) TEU.

⁹⁸ . ARTICLE 30 (2) (ex Article K.2) TEU.

⁹⁹ . ARTICLE 34 (1) TEU.

¹⁰⁰ . ARTICLE 208 (ex Article 152) TEC. This provision applies to the intergovernmental pillars.

CLAUSE 62 : External representation ¹⁰¹

1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.
2. The Presidency shall be responsible for the implementation of decisions taken **within the framework of common foreign and security policy**; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.
3. The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.
4. The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.
5. The Council may, whenever it deems it necessary, appoint a special representative with a mandate in relation to particular policy issues.

CLAUSE 63 : Voting

1. **Within the framework of the European Community, the Council shall act by a majority of its members, save where provided that the Council is required to act by a qualified majority or by unanimity.** ¹⁰²
2. **Within the framework of common foreign and security policy and of police and judicial cooperation in criminal matters, the Council shall act by unanimity, save as otherwise provided .** ¹⁰³
3. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as **provided for in Article 205 (2) of the Treaty establishing the European Community.** ¹⁰⁴
4. Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity. ¹⁰⁵

¹⁰¹ . ARTICLE 18 (ex Article J.8) TEU.

¹⁰² . Rewriting of ARTICLE 205 (1) (ex Article 148) TEC.

¹⁰³ . New provision.

¹⁰⁴ . ARTICLE 205 (2) first sentence (ex Article 148) TEC.

ARTICLES 23 (2) TUE, 34 (3) TUE, and 44 TUE are also referring to ARTICLE 205 (2) TCE. This provision applies thus to Titles V, VI, VII TUE, thus to the whole Union.

¹⁰⁵ . ARTICLE 205 (3) TEC. ARTICLE 23 (1), first sentence TEU, and ARTICLE 41 (1) TEU are also referring to Article 205 (3) TEC. This provision applies thus to the whole Union. However, legally speaking, this provision does not apply to article 44 (2) TEU. This is most likely not intentional since it is the only one not to be referred to.

III. ? The Commission

CLAUSE 64 : Composition ¹⁰⁶

1. The Commission shall consist of Members who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

Only nationals of Member States may be Members of the Commission.

The Commission must include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State.

2. The Members of the Commission shall, in the general interest of the **European Community**, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks.

CLAUSE 65 : Appointment ¹⁰⁷

1. The Members of the Commission shall be appointed for a period of five years, subject, if need be, to **the motion of censure referred to in Clause 58**.

Their term of office shall be renewable.

2. The governments of the Member States shall nominate by common accord the person they intend to appoint as President of the Commission; the nomination shall be approved by the European Parliament.

The governments of the Member States shall, by common accord with the nominee for President, nominate the other persons whom they intend to appoint as Members of the Commission.

The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by common accord of the governments of the Member States.

CLAUSE 66 : Presidency ¹⁰⁸

¹⁰⁶. ARTICLE 213 (1), selected parts, and (2) paragraphs 1 and 2 (ex Article 157) TEC.

¹⁰⁷. ARTICLE 214 (ex Article 158) TEC.

¹⁰⁸. Consolidation of ARTICLE 219, first paragraph (ex Article 163) and ARTICLE 217 (ex Article 161) TEC.

The Commission shall work under the political guidance of its President. The Commission may appoint a Vice-President or two Vice-Presidents from among its Members.

CLAUSE 67 : Functions

1. In order to ensure the proper functioning and development of the common market, the Commission shall :

- ensure that the provisions of the **Treaty establishing the European Community** and the measures taken by the institutions pursuant thereto are applied;
- formulate recommendations or deliver opinions on matters dealt with in **the said Treaty**, if it expressly so provides or if the Commission considers it necessary;
- have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in **the said Treaty**;
- exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.¹⁰⁹

2. Where, in pursuance of **the Treaty establishing the European Community**, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal, subject to Article 251(4) and (5) **of the said Treaty**.

As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.¹¹⁰

3. **The Commission shall be fully associated with the work carried out in the common foreign and security policy field and in the areas falling under police and judicial cooperation in criminal matters.**¹¹¹

CLAUSE 68 : Voting¹¹²

The Commission shall act by a majority of the number of its Members

IV. ? The Court of Justice

CLAUSE 69 : Composition and Appointment

¹⁰⁹ . ARTICLE 211 (ex Article 155) TEC.

¹¹⁰ . ARTICLE 250 (ex Article 189a) TEC.

¹¹¹ . Consolidation of ARTICLE 27 (ex Article J.17) TEU and ARTICLE 36 (2) (ex Article K.8) TEU.

¹¹² . ARTICLE 219 second sentence (ex Article 163) TEC.

1. The Court of Justice shall consist of judges and shall be assisted by Advocates-General. ¹¹³

2. The Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years. ¹¹⁴

3. The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected. ¹¹⁵

CLAUSE 70 : Functions

The Court of Justice shall ensure that in the interpretation and application of **the Treaties** the law is observed, **in accordance with Clause 87**. ¹¹⁶

CLAUSE 71 : Court of first instance ¹¹⁷

1. A Court of First Instance shall be attached to the Court of Justice with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding defined in accordance with the conditions laid down in **Article 225** paragraph 2 **of the Treaty establishing the European Community**. The Court of First Instance shall not be competent to hear and determine questions referred for a preliminary ruling under Article 234 **of the said Treaty**..

2. The members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

V. ? The Court of Auditors

CLAUSE 72 : Composition and appointment ¹¹⁸

1. The Members of the Court of Auditors shall be chosen from among persons who

¹¹³ . Consolidation of ARTICLE 221, paragraph 1 (ex Article 165) TEC, and ARTICLE 222 first sentence (ex Article 166) TEC (selected parts).

¹¹⁴ . ARTICLE 223, paragraph 1 (ex Article 167) TEC.

¹¹⁵ . ARTICLE 223, paragraph 5 (ex Article 167) TEC.

¹¹⁶ . ARTICLE 220 (ex Article 164) TEC.

¹¹⁷ . ARTICLE 225 (1) and (3) (selected parts) (ex Article 168a) TEC.

¹¹⁸ . ARTICLE 247 (2), (3) and (4) (ex Article 188b) TEC.

belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

2. The Members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the European Parliament.

The Members of the Court of Auditors shall be eligible for reappointment.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

3. The Members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

CLAUSE 73 : Functions

1. The Court of Auditors shall carry out the audit.¹¹⁹

2. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community insofar as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the *Official Journal of the European Communities*.¹²⁰

VI. ? The consultative Committees

CLAUSE 74 : The Economic and Social Committee

1. The Committee shall consist of representatives of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public.¹²¹

2. The members of the Committee shall be appointed by the Council, acting unanimously, for four years. Their appointments shall be renewable.

The members of the Committee may not be bound by any mandatory instructions.

¹¹⁹ . ARTICLE 246 (ex Article 188a) TEC.

¹²⁰ . ARTICLE 248 (1) (ex Article 188c) TEC.

¹²¹ . ARTICLE 257, paragraph 2 (ex Article 193) TEC.

They shall be completely independent in the performance of their duties, in the general interest of the Community. ¹²²

3. The Committee must be consulted by the Council or by the Commission where **the Treaty establishing the European Community** so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate. ¹²³

CLAUSE 75 : The Committee of the Regions

1. The Committee of Regions shall consist of representatives of regional and local bodies. ¹²⁴

2. The members of the Committee and an equal number of alternate members shall be appointed for four years by the Council acting unanimously on proposals from the respective Member States. Their term of office shall be renewable . No member of the Committee shall at the same time be a Member of the European Parliament.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of Community. ¹²⁵

3. The Committee of the Regions shall be consulted by the Council or by the Commission where **the Treaty establishing the European Community** so provides and in all other cases, in particular those which concern cross-border cooperation, in which one of these two institutions considers it appropriate. ¹²⁶

VII. ? The European System of Central Banks and the European Central Bank

CLAUSE 76 : General ¹²⁷

The ESCB shall be composed of the ECB and of the national central banks.

The ECB shall have legal personality.

The ESCB shall be governed by the decision-making bodies of the ECB which shall be the Governing Council and the Executive Board.

CLAUSE 77 : The Governing Council and the Executive Board ¹²⁸

¹²² . ARTICLE 258, paragraphs 2 and 3 (ex Article 194) TEC.

¹²³ . ARTICLE 262 paragraph 1 (ex Article 198) TEC.

¹²⁴ . Rewriting of ARTICLE 263 paragraph 1 (ex Article 198a) TEC.

¹²⁵ . ARTICLE 263 paragraphs 3 and 4 (ex Article 198a) TEC.

¹²⁶ . ARTICLE 265, paragraph 1 (ex Article 198c)TEC.

¹²⁷ . ARTICLE 107 (1), (2) and (3) (ex Article 106) TEC.

1. The Governing Council of the ECB shall comprise the members of the Executive Board of the ECB and the Governors of the national central banks.

2. (a) The Executive Board shall comprise the President, the Vice-President and four other members.

(b) The President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the ECB.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

CLAUSE 78 : Independence ¹²⁹

When exercising the powers and carrying out the tasks and duties conferred upon them by **the Treaty establishing the European Community** and the Statute of the ESCB, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body. The Community institutions and bodies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks

CLAUSE 79 : Functions

1. The basic tasks to be carried out through the ESCB shall be :

- to define and implement the monetary policy of the **European Community**;
- to conduct foreign exchange operations consistent with the provisions of Article 111 **of the Treaty establishing the European Community**;
- to hold and manage the official foreign reserves of the Member States;
- to promote the smooth operation of payment systems.

The third indent of **the previous paragraph** shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.¹³⁰

¹²⁸ . ARTICLE 112 (ex Article 109a) TEC.

¹²⁹ . ARTICLE 108 (ex Article 107) TEC.

¹³⁰ . ARTICLE 105 (2) and (3) (ex Article 105) TEC.

2. The ECB shall have the exclusive right to authorise the issue of banknotes within the **European** Community. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the **European** Community.

Member States may issue coins subject to approval by the ECB of the volume of the issue. ¹³¹

VIII.? The European Investment Bank

CLAUSE 80 : General

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States. ¹³²

CLAUSE 81 : Functions ¹³³

1. The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the common market in the interest of the **European** Community. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of projects in all sectors of the economy **as provided for in Article 267 of the Treaty establishing the European Community.**

2. In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Community financial instruments.

TITLE VI. – FINANCIAL PROVISIONS

CLAUSE 82 : Budget

1. All items of revenue and expenditure of the **European Community** including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

Administrative expenditure occasioned for the institutions **in the framework of common foreign and security policy and to cooperation and of police and judicial cooperation in criminal matters** ¹³⁴ shall be charged to the budget. The operational

¹³¹ . ARTICLE 106 (1) and (2) first sentence (ex Article 105a) TEC.

¹³² . ARTICLE 266, paragraphs 1 and 2 (ex article 198d) TEC.

¹³³ . ARTICLE 267 (ex Article 198e) TEC (selected parts).

¹³⁴ . The original provision still refers to “cooperation in the fields of justice and home affairs”. It has to be adapted according to the modification of Title VI TEU by the Treaty of Amsterdam.

expenditure occasioned by the implementation of the said provisions may, under the conditions referred to therein, be charged to the budget.

The revenue and expenditure shown in the budget shall be in balance.¹³⁵

2. Without prejudice to other revenue, the budget shall be financed wholly from own resources.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the **European** Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.¹³⁶

CLAUSE 83 : Budgetary discipline¹³⁷

With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the **European** Community's own resources arising under provisions laid down by the Council pursuant to **Clause 82, § 2**.

CLAUSE 84 : Financial interests of the European Community¹³⁸

1. The **European** Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community through measures to be taken in accordance with **Article 280 of the Treaty establishing the European Community**, which shall act as a deterrent and be such as to afford effective protection in the Member States.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the **European** Community as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of **the said Treaty**, the Member States shall coordinate their action aimed at protecting the financial interests of the **European** Community against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

¹³⁵ . ARTICLE 268 (ex Article 199) TEC.

¹³⁶ . ARTICLE 269 (ex Article 201) TEC.

¹³⁷ . ARTICLE 270 (ex Article 201A) TEC.

¹³⁸ . ARTICLE 280 (1) to (3) (ex Article 209a) TEC.

TITLE VII. — PROVISIONS ON CLOSER COOPERATION

CLAUSE 85 : General conditions ¹³⁹

1. Member States which intend to establish closer cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by **the Treaties** provided that the cooperation:

- (a) is aimed at furthering the objectives of the Union and at protecting and serving its interests;
- (b) respects the principles of the said Treaties and the single institutional framework of the Union;
- (c) is only used as a last resort, where the objectives of the said Treaties could not be attained by applying the relevant procedures laid down therein;
- (d) concerns at least a majority of Member States;
- (e) does not affect the "acquis communautaire" and the measures adopted under the other provisions of the said Treaties;
- (f) does not affect the competences, rights, obligations and interests of those Member States which do not participate therein;
- (g) is open to all Member States and allows them to become parties to the cooperation at any time, provided that they comply with the basic decision and with the decisions taken within that framework;
- (h) complies with the specific additional criteria laid down in Article 11 of the Treaty establishing the European Community and *Article 40* of **the annexed Special Protocol on police and judicial cooperation in criminal matters** depending on the area concerned, and is authorised by the Council in accordance with the procedures laid down therein.

2. Member States shall apply, as far as they are concerned, the acts and decisions adopted for the implementation of the cooperation in which they participate. Member States not participating in such cooperation shall not impede the implementation thereof by the participating Member States.

CLAUSE 86 : Implementation of closer cooperation

1. For the purposes of the adoption of the acts and decisions necessary for the implementation of the cooperation referred to in **Clause 85**, the relevant institutional provisions of **the Treaties** shall apply. However, while all members of the Council shall be able to take part in the deliberations, only those representing participating

¹³⁹. ARTICLE 43 (ex Article K.15) TEU.

Member States shall take part in the adoption of decisions. The qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community. Unanimity shall be constituted by only those Council members concerned.¹⁴⁰

2. Expenditure resulting from implementation of the cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless the Council, acting unanimously, decides otherwise.¹⁴¹

3. The Council and the Commission shall regularly inform the European Parliament of the development of closer cooperation established on the basis of this Title.¹⁴²

TITLE VIII. — FINAL PROVISIONS

CLAUSE 87 : Jurisdiction of the Court of Justice¹⁴³

The provisions of the Treaty establishing the European Community concerning the powers of the Court of Justice and the exercise of those powers shall apply to this Treaty, without prejudice to the following paragraphs.

They shall apply to Clause 31 and Title IV of Part Three of the Treaty establishing the European Community, to police and judicial cooperation in criminal matters, and to the closer cooperation referred to in Title VII of this Treaty under the conditions provided by the Treaties.

They shall not apply to common foreign and security policy.

They shall not apply to Title I of this Treaty, nor to Clauses 50, 51 and 91.¹⁴⁴

They shall apply to Clause 4 with regard to action of the institutions, insofar as the Court has jurisdiction under the Treaties.

¹⁴⁰ . ARTICLE 44 (1) (ex Article K.16) TEU.

¹⁴¹ . ARTICLE 44 (2) (ex Article K.16) TEU.

¹⁴² . ARTICLE 45 (ex Article K.17) TEU.

¹⁴³ . Rewriting of ARTICLE 46 (ex Article L) TEC.

¹⁴⁴ . The group suggests that this exception be repealed.

CLAUSE 88 : The Basic Treaty and the other treaties¹⁴⁵

1. The Treaty on the European Union, the Treaty establishing the European Community and their subsequent modifications are repealed. They are replaced by the Basic Treaty, by the annexed protocols Special Protocols on common foreign and security policy and on police and judicial cooperation in criminal matters, and by the consolidated version of the Treaty establishing the European Community annexed to the Final Act of the Treaty of Amsterdam as modified in accordance with the following paragraph.

Articles 2 to 10, 12, par. 1, 14 (2), 16, ...¹⁴⁶ of the consolidated version of the Treaty establishing the European Community annexed to the Final Act of the Treaty of Amsterdam are repealed.

All the protocols annexed to the Treaty on the European Union shall be henceforth annexed to the Basic Treaty. All the protocols annexed to the Treaty establishing the European Community shall be henceforth annexed to the consolidated version of the said Treaty and to the Basic Treaty.

All the protocols referred to in the previous paragraph shall be set out in the Annex to this Treaty.

2. Where this Treaty refers to the “treaties”, it refers to the Basic Treaty itself, the consolidated version of the Treaty establishing the European Community, and where appropriate to the Treaties establishing the European Coal and Steel Community and the European Atomic Energy Community.

Where this Treaty, the consolidated version of the Treaty establishing the European Community, and any other instruments or acts refer to the “Treaty establishing the European Community” as a whole, they also refer to Clauses 5 to 45, 52 to 57, § 1, ... of the Basic Treaty¹⁴⁷.

Where any other instruments or acts refer to a specific Title, Chapter, Section or provision of the Treaty establishing the European Community, they also refer to the corresponding Clauses of the Basic Treaty among those mentioned in the previous paragraph.

¹⁴⁵ . New provision. There could also be a third paragraph similar to Article 10 of the Treaty of Amsterdam aimed at preserving the law as it stands which could read : “The repeal or deletion of provisions of the consolidated version of the Treaty establishing the European Community (and of the Treaty on the European Union) as in force before the entry into force of the Basic Treaty, and the adaptation of certain of its (their) provisions shall not bring about any change in the legal effects of the provisions of the consolidated version of the Treaty establishing the European Community, (of the Treaty on the European Union) nor of the legal acts adopted on the basis of the said Treaty (Treaties).

¹⁴⁶ . See in Annex II of this report the provisions of the consolidated version of the Treaty establishing the European Community that have been replaced in the Basic Treaty.

¹⁴⁷ . See the Clauses of the Basic Treaty that correspond to the repealed provisions of the consolidated version of the Treaty establishing the European Community referred to in Clause 88, § 1.

CLAUSE 89 : Association ¹⁴⁸

The **European** Community may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

CLAUSE 90 : Accession to the Union ¹⁴⁹

Any European State which respects the principles set out in **Clause 2, § 1** may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

The conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

CLAUSE 91 : Suspension of Members States' rights ¹⁵⁰

1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in **Clause 2, § 1**, after inviting the government of the Member State in question to submit its observations.

2. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of **this Treaty, subject to Article 309 of the Treaty establishing the European Community**, to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under **this Treaty, subject to Article 309 of the Treaty establishing the European Community**, shall in any case continue to be binding on that State.

3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.

¹⁴⁸ . ARTICLE 310 (ex Article 238) TEC.

¹⁴⁹ . ARTICLE 49 (ex Article O) TEU.

¹⁵⁰ . ARTICLE 7 (ex Article F.1) TEU

4. For the purposes of this **Clause**, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.

5. For the purposes of this **Clause**, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its members.

CLAUSE 92 : Revision procedure ¹⁵¹

The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

CLAUSE 93 : Duration ¹⁵²

This Treaty is concluded for an unlimited period.

CLAUSE 94 : Ratification and entry into force ¹⁵³

1. This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of

2. This Treaty shall enter into force on ..., provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.

CLAUSE 95 : Authenticity ¹⁵⁴

¹⁵¹. ARTICLE 48 (ex Article N) TEU.

¹⁵². Comp. ARTICLE 51 (ex Article Q) TEU.

¹⁵³. Comp. ARTICLE 52 (ex Article R) TEU.

This Treaty, drawn up in a single original in the Danish, Dutch, English, **Finish**, French, German, Greek, Irish, Italian, Portuguese, Spanish, **and Swedish** languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the government of ... , which will transmit a certified copy to each of the governments of the other signatory States.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Treaty.

¹⁵⁴ . Comp. ARTICLE 53 (ex Article S) TEU.

ANNEX : Protocols annexed to the Treaties

(Protocols referred to in Clause 88, § 1 of the Basic Treaty - Text not reproduced)

Protocol annexed to the *Basic Treaty* :

Protocol (No 1) on **Clause 47 of the Basic Treaty** (1997)

Protocols annexed to the *Basic Treaty* and to the consolidated version of the Treaty establishing the European Community :

- Protocol (No 2) integrating the Schengen acquis into the framework of the European Union (1997)
- Protocol (No 3) on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland (1997)
- Protocol (No 4) on the position of the United Kingdom and Ireland (1997)
- Protocol (No 5) on the position of Denmark (1997)
- Protocol (No 10) on the Statute of the European Investment Bank (1957)
- Protocol (No 11) on the Statute of the Court of Justice of the European Community (1957)
- Protocol (No 12) on Italy (1957)
- Protocol (No 13) on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State (1957)
- Protocol (No 14) concerning imports into the European Community of petroleum products refined in the Netherlands Antilles (1962)
- Protocol (No 15) on special arrangements for Greenland (1985)
- Protocol (No 16) on the acquisition of property in Denmark (1992)
- Protocol (No 17) concerning Article 141 of the Treaty establishing the European Community (1992)
- Protocol (No 18) on the Statute of the European System of Central Banks and of the European Central Bank (1992)
- Protocol (No 19) on the Statute of the European Monetary Institute (1992)
- Protocol (No 20) on the excessive deficit procedure (1992)
- Protocol (No 21) on the convergence criteria referred to in Article 121 of the Treaty establishing the European Community (1992)
- Protocol (No 22) on Denmark (1992)
- Protocol (No 23) on Portugal (1992)

- Protocol (No 24) on the transition to the third stage of economic and monetary union (1992)
- Protocol (No 25) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland (1992)
- Protocol (No 26) on certain provisions relating to Denmark (1992)
- Protocol (No 27) on France (1992)
- Protocol (No 28) on economic and social cohesion (1992)
- Protocol (No 29) on asylum for nationals of Member States of the European Union (1997)
- Protocol (No 30) on the application of the principles of subsidiarity and proportionality (1997)
- Protocol (No 31) on external relations of the Member States with regard to the crossing of external borders (1997)
- Protocol (No 32) on the system of public broadcasting in the Member States (1997)
- Protocol (No 33) on protection and welfare of animals (1997)

Protocols annexed to *the Basic Treaty, to the consolidated version of the Treaty establishing the European Community, and to the Treaties establishing the European Coal and Steel Community and the European Atomic Energy Community*

- Protocol (No 6) annexed to **the Basic Treaty** and to the Treaties establishing the European Communities (1992)
- Protocol (No 7) on the institutions with the prospect of enlargement of the European Union (1997)
- Protocol (No 8) on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol (1997)
- Protocol (No 9) on the role of national parliaments in the European Union (1997)
- Protocol (No 34) on the privileges and immunities of the European Communities (1965)

II. – Special Protocols annexed to the Basic Treaty

A. – Special Protocol on common foreign and security policy ¹⁵⁵

ARTICLE 11 (ex Article J.1)

1. Replaced by Clause 46 of the Basic Treaty

2. Replaced by Clause 48 of the Basic Treaty

ARTICLE 12 (ex Article J.2)

The Union shall pursue the objectives of **the common foreign and security policy** set out in **Clause 46 of the Basic Treaty** by:

- defining the principles of and general guidelines for the common foreign and security policy;
- deciding on common strategies;
- adopting joint actions;
- adopting common positions;
- strengthening systematic cooperation between Member States in the conduct of policy.

ARTICLE 13 (ex Article J.3)

1. The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.
2. The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common.

Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.

3. Replaced by Clause 61, § 2 of the Basic Treaty

ARTICLE 14 (ex Article J.4)

1. Joint actions **referred to in Clause 61, § 2 of the Basic Treaty** shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.

¹⁵⁵ . Title V TEU. The numbering of the Articles of the Special Protocol on common foreign and security policy is the one set out in Title V of the TEU. This Special Protocol shall be renumbered and the new resulting cross references shall be implemented at a latter stage (see references indicated in italic).

2. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.
3. Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity.
4. The Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.
5. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.
6. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures.
7. Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness.

ARTICLE 15 (ex Article J.5)

Common positions **referred to in Clause 61, § 2 of the Basic Treaty** shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions.

ARTICLE 16 (ex Article J.6)

Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.

ARTICLE 17 (ex Article J.7)

1. ***Replaced by Clause 47, § 1 of the Basic Treaty***
2. ***Replaced by Clause 47, § 2 of the Basic Treaty***
3. ***Paragraph 1 replaced by Clause 47, § 3 of the Basic Treaty.***

The competence of the European Council to establish guidelines in accordance with *Article 13* shall also obtain in respect of the WEU for those matters for which the Union avails itself of the WEU.

When the Union avails itself of the WEU to elaborate and implement decisions of the Union on the tasks referred to in **Clause 47, § 2 of the Basic Treaty** all Member States of the Union shall be entitled to participate fully in the tasks in question. The Council, in agreement with the institutions of the WEU, shall adopt the necessary practical arrangements to allow all Member States contributing to the tasks in question to participate fully and on an equal footing in planning and decision-taking in the WEU.

Decisions having defence implications dealt with under this paragraph shall be taken without prejudice to the policies and obligations referred to in **Clause 47, § 1, third subparagraph of the Basic Treaty**.

4. . Replaced by Clause 47, § 4 of the Basic Treaty

5. Replaced by Clause 47, § 5 of the Basic Treaty

ARTICLE 18 (ex Article J.8)

Replaced by Clause 62 of the Basic Treaty

ARTICLE 19 (ex Article J.9)

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such fora.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

2. Without prejudice to paragraph 1 and *Article 14 (3)*, Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

ARTICLE 20 (ex Article J.10)

The diplomatic and consular missions of the Member States and the Commission Delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the common positions and joint actions adopted by the Council are complied with and implemented.

They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in **Clause 10 of the Basic Treaty**.

ARTICLE 21 (ex Article J.11)

Paragraph 1 replaced by Clause 57, § 2 of the Basic Treaty

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

ARTICLE 22 (ex Article J.12)

1. Any Member State or the Commission may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council.

2. In cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, shall convene an extraordinary Council meeting within forty-eight hours or, in an emergency, within a shorter period.

ARTICLE 23 (ex Article J.13)

1. Decisions **in the framework common foreign and security policy** shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- when adopting joint actions, common positions or taking any other decision on the basis of a common strategy;
- when adopting any decision implementing a joint action or a common position.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members.

This paragraph shall not apply to decisions having military or defence implications.

3. For procedural questions, the Council shall act by a majority of its members.

ARTICLE 24 (ex Article J.14)

When it is necessary to conclude an agreement with one or more States or international organisations in implementation of **the provisions relating to common foreign and security policy**, the Council, acting unanimously, may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council acting unanimously on a recommendation from the Presidency. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall apply provisionally to them.

The provisions of this Article shall also apply to matters falling under **police and judicial cooperation in criminal matters**.

ARTICLE 25 (ex Article J.15)

Without prejudice to Article 207 of the Treaty establishing the European Community, a Political Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.

ARTICLE 26 (ex Article J.16)

The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.

ARTICLE 27 (ex Article J.17)

Replaced by Clause 67, § 3 of the Basic Treaty

ARTICLE 28 (ex Article J.18)

1. Articles 190, 196 to 199, 204, 206 to 209, 213, **215, 216, 218**, 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas **falling under common foreign and security policy**.¹⁵⁶

2. Administrative expenditure which the provisions relating to the areas **referred to in paragraph 1** entail for the institutions shall be charged to the budget of the European Communities.

3. Operational expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the budget of the European Communities it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under *Article 23 (1)*, second subparagraph, shall not be obliged to contribute to the financing thereof.

4. The budgetary procedure laid down in **the Basic Treaty and** ¹⁵⁷ the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.

¹⁵⁶ . Some Articles of the TEC referred to in this Article have been fully replaced in the Basic Treaty. Given that the Basic Treaty “applies” to the protocol annexed to it (except of course all the provisions having a scope of application limited to the EC), they don’t have to be mentioned here (Articles 189, 203, and 214 of the TEC).

¹⁵⁷ . If Clauses 82 to 84 are part of the “budgetary procedure”, the Basic Treaty has to be referred to.

B. – Special Protocol on police and judicial cooperation in criminal matters 158

ARTICLE 29 (ex Article K.1)

Replaced by Clause 49, § 1 of the Basic Treaty

ARTICLE 30 (ex Article K.2)

1. **Pursuant to the objectives set out in Clause 49, § 1 of the Basic Treaty**, common action in the field of police cooperation shall include:

- (a) operational cooperation between the competent authorities, including the police, customs and other specialised law enforcement services of the Member States in relation to the prevention, detection and investigation of criminal offences;
- (b) the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions, in particular through Europol, subject to appropriate provisions on the protection of personal data;
- (c) cooperation and joint initiatives in training, the exchange of liaison officers, secondments, the use of equipment, and forensic research;
- (d) the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime.

2. **In order to promote cooperation through Europol as provided for in Clause 61, § 3 of the Basic Treaty, the Council** shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:

- (a) enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;
- (b) adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;
- (c) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;
- (d) establish a research, documentation and statistical network on cross-border crime.

ARTICLE 31 (ex Article K.3)

158 . Title VI TEU. The numbering of the Articles of the Special Protocol on police and judicial cooperation in criminal matters is the one set out in Title VI of the TEU. This Special Protocol shall be renumbered and the new resulting cross references shall be implemented at a latter stage (see references indicated in italic).

Pursuant to the objectives set out in Clause 49, § 1 of the Basic Treaty, common action on judicial cooperation in criminal matters shall include :

- (a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions;
- (b) facilitating extradition between Member States;
- (c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;
- (d) preventing conflicts of jurisdiction between Member States;
- (e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.

ARTICLE 32 (ex Article K.4)

The Council shall lay down the conditions and limitations under which the competent authorities referred to in *Articles 30 and 31* may operate in the territory of another Member State in liaison and in agreement with the authorities of that State.

ARTICLE 33 (ex Article K.5)

Clause 49 of the Basic Treaty and this Special Protocol shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

ARTICLE 34 (ex Article K.6)

1. In the areas **falling under police and judicial cooperation in criminal matters** Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.

2. Pursuant to Clause 61, § 3 of the Basic Treaty, the Council acting unanimously on the initiative of any Member State or of the Commission, may :

- (a) adopt common positions defining the approach of the Union to a particular matter;
- (b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;
- (c) adopt decisions for any other purpose consistent with the objectives **pursued by police and judicial cooperation in criminal matters**, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;

(d) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.

Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two-thirds of the Contracting Parties.

3. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as laid down in Article 205(2) of the Treaty establishing the European Community, and for their adoption acts of the Council shall require at least 62 votes in favour, cast by at least 10 members.

4. For procedural questions, the Council shall act by a majority of its members.

ARTICLE 35 (ex Article K.7)

1. The Court of Justice of the European Communities shall have jurisdiction, subject to the conditions laid down in this Article, to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established **within the framework of police and judicial cooperation in criminal matters** and on the validity and interpretation of the measures implementing them.

2. By a declaration made at the time of signature of the Treaty of Amsterdam or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings as specified in paragraph 1.

3. A Member State making a declaration pursuant to paragraph 2 shall specify that either:

(a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, or

(b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

4. Any Member State, whether or not it has made a declaration pursuant to paragraph 2, shall be entitled to submit statements of case or written observations to the Court in cases which arise under paragraph 1.

5. The Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

6. The Court of Justice shall have jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The proceedings provided for in this paragraph shall be instituted within two months of the publication of the measure.

7. The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of acts adopted under *Article 34 (2)* whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members. The Court shall also have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of conventions established under *Article 34(2)(d)*.

ARTICLE 36 (ex Article K.8)

1. A Coordinating Committee shall be set up consisting of senior officials. In addition to its coordinating role, it shall be the task of the Committee to:

- give opinions for the attention of the Council, either at the Council's request or on its own initiative;
- contribute, without prejudice to Article 207 of the Treaty establishing the European Community, to the preparation of the Council's discussions in the areas referred to in **Clause 49, § 1 of the Basic Treaty**.

2. The Commission shall be fully associated with the work in the areas **falling under police and judicial cooperation in criminal matters**.

ARTICLE 37 (ex Article K.9)

Within international organisations and at international conferences in which they take part, Member States shall defend the common positions adopted under the provisions of **Clause 49 of the Basic Treaty and this Special Protocol**.

Clause 62 of the Basic Treaty and Article 19 of the Special Protocol on common foreign and security policy shall apply as appropriate to matters falling under **police and judicial cooperation in criminal matters**.

ARTICLE 38 (ex Article K.10)

Agreements referred to in *Article 24 of the Special Protocol on common foreign and security policy* may cover matters falling under **police and judicial cooperation in criminal matters**.

ARTICLE 39 (ex Article K.11)

1. Replaced by Clause 57, § 3 of the Basic Treaty

2. Replaced by Clause 57, § 3 of the Basic Treaty

3. The European Parliament may ask questions of the Council or make recommendations to it. Each year, it shall hold a debate on the progress made in the areas **falling under police and judicial cooperation in criminal matters**.

ARTICLE 40 (ex Article K.12)

1. Member States which intend to establish closer cooperation between themselves may be authorised, subject to **Clause 85 and 86, §§ 1 and 2 of the Basic Treaty**, to make use of the institutions, procedures and mechanisms laid down by the Treaties provided that the cooperation proposed :

(a) respects the powers of the European Community, and the objectives laid down **in the framework of police and judicial cooperation in criminal matters**;

(b) has the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice.

2. The authorisation referred to in paragraph 1 shall be granted by the Council, acting by a qualified majority at the request of the Member States concerned and after inviting the Commission to present its opinion; the request shall also be forwarded to the European Parliament.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the granting of an authorisation by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members.

3. Any Member State which wishes to become a party to cooperation set up in accordance with this Article shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of receipt of that notification, possibly accompanied by a recommendation for such specific arrangements as it may deem necessary for that Member State to become a party to the cooperation in question. Within four months of the date of that notification, the Council shall decide on the request and on such specific arrangements as it may deem necessary. The decision shall be deemed to be taken unless the Council, acting by a qualified majority, decides to hold it in abeyance; in this case, the Council shall state the reasons for its decision and set a deadline for reexamining it. For the purposes of this paragraph, the Council shall act under the conditions set out in **Clause 86, §§ 1 and 2 of the Basic Treaty**.

4. **Clause 49 of the Basic Treaty** and the provisions of Articles **30 to 41** shall apply to the closer cooperation provided for by this Article, save as otherwise provided for in this Article and in **Clause 85 and 86, §§ 1 and 2 of the Basic Treaty**.

The provisions of **the Basic Treaty and** ¹⁵⁹ the Treaty establishing the European Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply to paragraphs 1, 2 and 3.

5. This Article is without prejudice to the provisions of the Protocol integrating the Schengen acquis into the framework of the European Union.

ARTICLE 41 (ex Article K.13)

1. Articles 190, 196 to 199, 204, 206 to 209, 213, **215, 216, 218**, 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas **falling under police and judicial cooperation in criminal matters**.¹⁶⁰

¹⁵⁹ . See Clause 70.

¹⁶⁰ . Some Articles of the TEC referred to in this Article have been fully replaced in the Basic Treaty. Given that the Basic Treaty “applies” to the protocol annexed to it (except of course all the provisions having a scope of application limited to the EC), they don’t have to be mentioned here (Articles 189, 203, 205 (3) and 214 of the TEC).

2. Administrative expenditure which the provisions relating to the areas **falling under police and judicial cooperation in criminal matters** entail for the institutions shall be charged to the budget of the European Communities.

3. Operational expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the budget of the European Communities it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise.

4. The budgetary procedure laid down in **the Basic Treaty and** ¹⁶¹ the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.

ARTICLE 42 (ex Article K.14)

Replaced by Clause 49, § 2 of the Basic Treaty

¹⁶¹ . If Clauses 82 to 84 are part of the “budgetary procedure”, the Basic Treaty has to be referred to.

III. – Final Act

The Conference of the Representatives of the Governments of the Member States, convened in.....has adopted the following texts :

I.

The Basic Treaty of the European Union

II.

Two Special Protocols on common foreign and security policy
and on police and judicial cooperation in criminal matters



EUROPEAN UNIVERSITY INSTITUTE
Robert Schuman Centre for Advanced Studies

ANNEXES

ANNEX II

THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

**Consolidated version annexed to the Final Act of the
Treaty of Amsterdam as modified in accordance with Clause 88, § 1
of the Basic Treaty**

Draft

THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

Consolidated version annexed to the Final Act of the Treaty of Amsterdam as modified in accordance with Clause 88, § 1 of the Basic Treaty

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PREAMBULE²

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS,

Footnote : “The Kingdom of Denmark, the Hellenic Republic, the Kingdom of Spain, Ireland, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland have since become members of the European Community”

DETERMINED to lay the foundations of an ever closer union among the peoples of Europe,

RESOLVED to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe,

AFFIRMING as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,

RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less-favoured regions,

DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,

INTENDING to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

DETERMINED to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating,

HAVE DECIDED to create a EUROPEAN COMMUNITY and to this end have designated as their Plenipotentiaries :

² . An alternative would be to consolidate the TEC Preamble within the Preamble of the TEU. See the model suggested by the Secretariat general of the Council.

PART ONE

PRINCIPLES

ARTICLE 1 (exArticle 1)

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN COMMUNITY.

ARTICLE 2 (exArticle 2)

Replaced by Clause 15 of the Basic Treaty.

ARTICLE 3 (exArticle 3)

Replaced by Clause 18, § 1 of the Basic Treaty.

ARTICLE 4 (ex Article 3a)

Replaced by Clause 19 of the Basic Treaty.

ARTICLE 5 (ex Article 3b)

Replaced by Clause 16 of the Basic Treaty.

ARTICLE 6 (ex Article 3c)

Replaced by Clause 18, § 2 of the Basic Treaty.

ARTICLE 7 (ex Article 4)

Replaced by Clause 52 and 53 of the Basic Treaty.

ARTICLE 8 (ex Article 4a)

Replaced by Clause 54 of the Basic Treaty.

ARTICLE 9 (ex Article 4b)

Replaced by Clause 55 of the Basic Treaty.

ARTICLE 10 (ex Article 5)

Replaced by Clause 17 of the Basic Treaty.

ARTICLE 11 (ex Article 5a)

1. Member States which intend to establish closer cooperation between themselves may be authorised, subject to **Clauses 85 and 86, §§ 1 and 2 of the Basic Treaty**, to make use of the institutions, procedures and mechanisms laid down by this Treaty, provided that the cooperation proposed:

- (a) does not concern areas which fall within the exclusive competence of the Community;
- (b) does not affect Community policies, actions or programmes;
- (c) does not concern the citizenship of the Union or discriminate between nationals of Member States;

- (d) remains within the limits of the powers conferred upon the Community by this Treaty; and
- (e) does not constitute a discrimination or a restriction of trade between Member States and does not distort the conditions of competition between the latter.

2. The authorisation referred to in paragraph 1 shall be granted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the granting of an authorisation by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the Council, meeting in the composition of the Heads of State or Government, for decision by unanimity.

Member States which intend to establish closer cooperation as referred to in paragraph 1 may address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

3. Any Member State which wishes to become a party to cooperation set up in accordance with this Article shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of receipt of that notification. Within four months of the date of that notification, the Commission shall decide on it and on such specific arrangements as it may deem necessary.

4. The acts and decisions necessary for the implementation of cooperation activities shall be subject to all the relevant provisions of this Treaty, save as otherwise provided for in this Article and in **Clauses 85 and 86, §§ 1 and 2 of the Basic Treaty**.

5. This Article is without prejudice to the provisions of the Protocol integrating the Schengen acquis into the framework of the European Union.

ARTICLE 12 (ex Article 6)

Replaced by Clause 7, § 1 of the Basic Treaty.

Pursuant to Clause 7, § 2 of the Basic Treaty the Council, acting in accordance with the **co-decision** procedure referred to in Article 251 of the **Treaty establishing the European Community**, may adopt rules designed to prohibit discrimination **on grounds of nationality**.

ARTICLE 13 (ex Article 6a)

Pursuant to Clause 5 of the Basic Treaty, without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

ARTICLE 14 (ex Article 7a)

1. The Community shall adopt measures with the aim of progressively establishing the internal market **as defined in Clause 21, § 2 of the Basic Treaty** over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 15, 26, 47(2), 49, 80, 93 and 95 and without prejudice to the other provisions of this Treaty.

2. *Replaced by Clause 21, § 2 of the Basic Treaty*

3. The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned **by the establishment of the internal market**.

ARTICLE 15 (ex Article 7c)

When drawing up its proposals with a view to achieving the objectives set out in Article 14, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.

If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.

ARTICLE 16 (ex Article 7d)

Replaced by Clause 20 of the Basic Treaty.

PART TWO

CITIZENSHIP OF THE UNION

ARTICLE 17 (ex Article 8)

Replaced by Clause 6 of the Basic Treaty.

ARTICLE 18 (ex Article 8a)

1. Replaced by Clause 8, § 1 of the Basic Treaty.

2. The Council may adopt provisions with a view to facilitating the exercise of **the rights of the citizens of the Union to move and reside freely within the territory of the Member States** as referred to in **Clause 8 of the Basic Treaty**; save as otherwise provided in this Treaty, the Council shall act in accordance with the **codecision** procedure referred to in Article 251. The Council shall act unanimously throughout this procedure.

ARTICLE 19 (ex Article 8b)

Replaced by Clause 9, § 1 of the Basic Treaty.

The electoral rights referred to in Clause 9, § 1 of the Basic Treaty shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

ARTICLE 20 (ex Article 8c)

Replaced by Clause 10 of the Basic Treaty.

ARTICLE 21 (ex Article 8d)

Replaced by Clauses 11, 12 and 13 of the Basic Treaty.

ARTICLE 22 (ex Article 8e)

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions **related to the citizenship of the Union**. This report shall take account of the development of the Union.

Second paragraph replaced by Clause 6, § 2 of the Basic Treaty.

PART THREE
COMMUNITY POLICIES

TITLE I
FREE MOVEMENT OF GOODS

ARTICLE 23 (ex Article 9)

Replaced by Clause 22, §1 and § 4 of the Basic Treaty.

ARTICLE 24 (ex Article 10)

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

CHAPTER 1
THE CUSTOMS UNION

ARTICLE 25 (ex Article 12)

Replaced by Clause 22, §2 of the Basic Treaty.

ARTICLE 26 (ex Article 28)

Common Customs Tariff duties shall be fixed by the Council acting by a qualified majority on a proposal from the Commission.

ARTICLE 27 (ex Article 29)

In carrying out the tasks entrusted to it under this Chapter the Commission shall be guided by:

- (a) the need to promote trade between Member States and third countries;
- (b) developments in conditions of competition within the Community insofar as they lead to an improvement in the competitive capacity of undertakings;
- (c) the requirements of the Community as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;
- (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Community.

CHAPTER 2
PROHIBITION OF QUANTITATIVE RESTRICTIONS
BETWEEN MEMBER STATES

ARTICLE 28 (ex Article 30)

Replaced by Clause 22, § 3 of the Basic Treaty.

ARTICLE 29 (ex Article 34)

Replaced by Clause 22, § 3 of the Basic Treaty.

ARTICLE 30 (ex Article 36)

The provisions of **Clause 22, § 3 of the Basic Treaty** (Articles 28 and 29)³ shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

ARTICLE 31 (ex Article 37)

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the Articles dealing with the prohibition of customs duties and quantitative restrictions between Member States **and of Clause 22 of the Basic Treaty**.

3. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying the rules contained in this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

TITLE II

AGRICULTURE

ARTICLE 32 (ex Article 38)

1. The common market shall extend to agriculture and trade in agricultural products. "Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products.

2. Save as otherwise provided in **Clause 27 of the Basic Treaty and** Articles 34 to 38, the rules laid down for the establishment of the common market shall apply to agricultural products.

3. The products subject to the provisions of **Clause 27 of the Basic Treaty and** Articles 34 to 38 are listed in Annex I to this Treaty.

4. The operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy.

ARTICLE 33 (ex Article 39)

³ . References in brackets are left only to remind the reader of the original provisions. In a latter stage they can be deleted.

Replaced by Clause 27 of the Basic Treaty.

ARTICLE 34 (ex Article 40)

1. In order to attain the objectives of **agricultural policy** set out in **Clause 27 of the Basic Treaty** (Article 33), a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

(a) common rules on competition;

(b) compulsory coordination of the various national market organisations;

(c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in **Clause 27 of the Basic Treaty** (Article 33), in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in **Clause 27 of the Basic Treaty** (Article 33) and shall exclude any discrimination between producers or consumers within the Community.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

ARTICLE 35 (ex Article 41)

To enable the objectives set out in **Clause 27 of the Basic Treaty** (Article 33) to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

(a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;

(b) joint measures to promote consumption of certain products.

ARTICLE 36 (ex Article 42)

The provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of Article 37(2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in **Clause 27 of the Basic Treaty** (Article 33).

The Council may, in particular, authorise the granting of aid:

(a) for the protection of enterprises handicapped by structural or natural conditions;

(b) within the framework of economic development programmes.

ARTICLE 37 (ex Article 43)

1. In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.

2. Having taken into account the work of the Conference provided for in paragraph 1, after consulting the Economic and Social Committee and within two years of the entry into force of this Treaty, the Commission

shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in Article 34(1), and for implementing the measures specified in **Clause 27 of the Basic Treaty and in this Title**.

These proposals shall take account of the interdependence of the agricultural matters mentioned in **Clause 27 of the Basic Treaty and in this Title**.

The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.

3. The Council may, acting by a qualified majority and in accordance with paragraph 2, replace the national market organisations by the common organisation provided for in Article 34(1) if:

(a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;

(b) such an organisation ensures conditions for trade within the Community similar to those existing in a national market.

4. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Community.

ARTICLE 38 (ex Article 46)

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

TITLE III

FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

CHAPTER 1

WORKERS

ARTICLE 39 (ex Article 48)

1. Replaced by Clause 23, § 1 of the Basic Treaty.

2. Replaced by Clause 23, § 1 of the Basic Treaty.

3. **Freedom of movement for workers** shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

4. The provisions of **Clause 23, § 1 of the Basic Treaty and of this Article** shall not apply to employment in the public service.

ARTICLE 40 (ex Article 49)

The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in **Clause 23, § 1 of the Basic Treaty and in Article 39**, in particular:

(a) by ensuring close cooperation between national employment services;

(b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;

(c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;

(d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

ARTICLE 41 (ex Article 50)

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

ARTICLE 42 (ex Article 51)

The Council shall, acting in accordance with the procedure referred to in Article 251, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;

(b) payment of benefits to persons resident in the territories of Member States.

The Council shall act unanimously throughout the procedure referred to in Article 251.

CHAPTER 2

RIGHT OF ESTABLISHMENT

ARTICLE 43 (ex Article 52)

Replaced by Clause 23, § 2 of the Basic Treaty.

ARTICLE 44 (ex Article 54)

1. In order to attain freedom of establishment as regards a particular activity, the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall act by means of directives.

2. The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

- (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
- (b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Community of the various activities concerned;
- (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
- (d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
- (e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, insofar as this does not conflict with the principles laid down in **Clause 27, § 2 of the Basic Treaty** (Article 33(2));
- (f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- (g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and other, are required by Member States of companies or firms within the meaning of the second paragraph of Article 48 with a view to making such safeguards equivalent throughout the Community;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

ARTICLE 45 (ex Article 55)

The provisions of **Clause 23, § 2 of the Basic Treaty and** of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of **Clause 23, § 2 and** of this Chapter shall not apply to certain activities.

ARTICLE 46 (ex Article 56)

1. The provisions of **Clause 23, § 2 of the Basic Treaty and** of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

2. The Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the abovementioned provisions.

ARTICLE 47 (ex Article 57)

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

2. For the same purpose, the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. The Council, acting unanimously throughout the procedure referred to in Article 251, shall decide on directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by qualified majority.

3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

ARTICLE 48 (ex Article 58)

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of **Clause 23, § 2 of the Basic Treaty and** of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

CHAPTER 3

SERVICES

ARTICLE 49 (ex Article 59)

Replaced by Clause 24 of the Basic Treaty.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of **Clause 24 of the Basic Treaty and of this** Chapter to nationals of a third country who provide services and who are established within the Community.

ARTICLE 50 (ex Article 60)

Services shall be considered to be "services" within the meaning of this Treaty where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

"Services" shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;

(d) activities of the professions.

Without prejudice to the provisions of **Clause 23, § 2 of the Basic Treaty and** of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

ARTICLE 51 (ex Article 61)

1. Freedom to provide services in the field of transport shall be governed by the provisions of **Clause 28 of the Basic Treaty and** the Title relating to transport.
2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

ARTICLE 52 (ex Article 63)

1. In order to achieve the liberalisation of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, issue directives acting by a qualified majority.
2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

ARTICLE 53 (ex Article 64)

The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 52(1), if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

ARTICLE 54 (ex Article 65)

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of **Clause 24 of the Basic Treaty** (the first paragraph of Article 49).

ARTICLE 55 (ex Article 66)

The provisions of Articles 45 to 48 shall apply to the matters covered by **Clause 24 of the Basic Treaty and by** this Chapter.

CHAPTER 4

CAPITAL AND PAYMENTS

ARTICLE 56 (ex Article 73b)

Replaced by Clause 25 of the Basic Treaty

ARTICLE 57 (ex Article 73c)

1. The provisions of **Clause 25 of the Basic Treaty** (Article 56) shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Community law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate – establishment, the provision of financial services or the admission of securities to capital markets.

2. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other Chapters of this Treaty, the Council may, acting by a qualified majority on a proposal from the Commission, adopt measures on the movement of capital to or from third countries involving direct investment – including investment in real estate – establishment, the provision of financial services or the admission of securities to capital markets. Unanimity shall be required for measures under this paragraph which constitute a step back in Community law as regards the liberalisation of the movement of capital to or from third countries.

ARTICLE 58 (ex Article 73d)

1. The provisions of **Clause 25 of the Basic Treaty** (Article 56) shall be without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. The provisions of **Clause 25 of the Basic Treaty and of** this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with this Treaty.

3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in **Clause 25 of the Basic Treaty** (Article 56).

ARTICLE 59 (ex Article 73f)

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the ECB, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary.

ARTICLE 60 (ex Article 73g)

1. If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.

2. Without prejudice to Article 297 and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest.

The Council may, acting by a qualified majority on a proposal from the Commission, decide that the Member State concerned shall amend or abolish such measures. The President of the Council shall inform the European Parliament of any such decision taken by the Council.

TITLE IV (ex Title IIIa)

VISAS, ASYLUM, IMMIGRATION AND OTHER POLICIES
RELATED TO FREE MOVEMENT OF PERSONS

ARTICLE 61 (ex Article 73i)

In order to establish progressively an area of freedom, security and justice, the Council shall adopt **measures in accordance with Clause 31 of the Basic Treaty and the following provisions.**

ARTICLE 62 (ex Article 73j)

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- (1) measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;
- (2) measures on the crossing of the external borders of the Member States which shall establish:
 - (a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;
 - (b) rules on visas for intended stays of no more than three months, including:
 - (i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
 - (ii) the procedures and conditions for issuing visas by Member States;
 - (iii) a uniform format for visas;
 - (iv) rules on a uniform visa;
- (3) measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

ARTICLE 63 (ex Article 73k)

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- (1) measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:
 - (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,
 - (b) minimum standards on the reception of asylum seekers in Member States,
 - (c) minimum standards with respect to the qualification of nationals of third countries as refugees,
 - (d) minimum standards on procedures in Member States for granting or withdrawing refugee status;
- (2) measures on refugees and displaced persons within the following areas:
 - (a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,
 - (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;
- (3) measures on immigration policy within the following areas:

- (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion,
 - (b) illegal immigration and illegal residence, including repatriation of illegal residents;
- (4) measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five year period referred to above.

ARTICLE 64 (ex Article 73l)

1. **Clause 31 of the Basic Treaty and** this Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

2. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries and without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned.

ARTICLE 65 (ex Article 73m)

Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market, shall include:

- (a) improving and simplifying:
 - the system for cross-border service of judicial and extrajudicial documents;
 - cooperation in the taking of evidence;
 - the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;
- (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
- (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

ARTICLE 66 (ex Article 73n)

The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by **Clause 31 of the Basic Treaty and** this Title, as well as between those departments and the Commission.

ARTICLE 67 (ex Article 73o)

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

2. After this period of five years:

- the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council;
- the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by **Clause 31 of the Basic Treaty and** this Title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.

3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

4. By derogation from paragraph 2, measures referred to in Article 62(2)(b) (ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.

ARTICLE 68 (ex Article 73p)

1. Article 234 shall apply to **Clause 31 of the Basic Treaty and** this Title under the following circumstances and conditions: where a question on the interpretation of **Clause 31 of the Basic Treaty and** this Title or on the validity or interpretation of acts of the institutions of the Community based on **Clause 31 of the Basic Treaty and** this Title is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

2. In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security.

3. The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of **Clause 31 of the Basic Treaty and** this Title or of acts of the institutions of the Community based on **Clause 31 of the Basic Treaty and** this Title. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become res judicata.

ARTICLE 69 (ex Article 73q)

The application of **Clause 31 of the Basic Treaty and** this Title shall be subject to the provisions of the Protocol on the position of the United Kingdom and Ireland and to the Protocol on the position of Denmark and without prejudice to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland.

TITLE V (ex Title IV)

TRANSPORT

ARTICLE 70 (ex Article 74)

Replaced by Clause 28, § 1 of the Basic Treaty

ARTICLE 71 (ex Article 75)

1. Pursuant to **Clause 28, § 2 of the Basic Treaty**, the Council shall act in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

2. By way of derogation from the procedure provided for in paragraph 1, where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be laid down by the Council acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee. In so doing, the Council shall take into account the need for adaptation to the economic development which will result from establishing the common market.

ARTICLE 72 (ex Article 76)

Until the provisions referred to in **Clause 28, § 2 of the Basic Treaty** have been laid down, no Member State may, without the unanimous approval of the Council, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

ARTICLE 73 (ex Article 77)

Aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

ARTICLE 74 (ex Article 78)

Any measures taken within the framework of this Treaty in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

ARTICLE 75 (ex Article 79)

1. In the case of transport within the Community, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question shall be abolished.

2. Paragraph 1 shall not prevent the Council from adopting other measures in pursuance of **Clause 28, § 2 of the Basic Treaty**.

3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the Economic and Social Committee, lay down rules for implementing the provisions of paragraph 1.

The Council may in particular lay down the provisions needed to enable the institutions of the Community to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall take the necessary decisions within the framework of the rules laid down in accordance with the provisions of paragraph 3.

ARTICLE 76 (ex Article 80)

1. The imposition by a Member State, in respect of transport operations carried out within the Community, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by the Commission.

2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall take the necessary decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

ARTICLE 77 (ex Article 81)

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs progressively.

The Commission may make recommendations to Member States for the application of this Article.

ARTICLE 78 (ex Article 82)

The provisions of **Clause 28 of the Basic Treaty** and this Title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.

ARTICLE 79 (ex Article 83)

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters without prejudice to the powers of the Economic and Social Committee.

ARTICLE 80 (ex Article 84)

1. The provisions of **Clause 28 of the Basic Treaty** and this Title shall apply to transport by rail, road and inland waterway.

2. The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.

The procedural provisions of Article 71 shall apply.

TITLE VI (ex Title V)

COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS

CHAPTER 1

RULES ON COMPETITION

SECTION 1

RULES APPLYING TO UNDERTAKINGS

ARTICLE 81 (ex Article 85)

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

ARTICLE 82 (ex Article 86)

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

ARTICLE 83 (ex Article 87)

1. The appropriate regulations or directives to give effect to the principles set out in Articles 81 and 82 shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

2. The regulations or directives referred to in paragraph 1 shall be designed in particular:

- (a) to ensure compliance with the prohibitions laid down in Article 81(1) and in Article 82 by making provision for fines and periodic penalty payments;
- (b) to lay down detailed rules for the application of Article 81(3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
- (c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 81 and 82;
- (d) to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
- (e) to determine the relationship between national laws and the provisions contained in this Section or adopted pursuant to this Article.

ARTICLE 84 (ex Article 88)

Until the entry into force of the provisions adopted in pursuance of Article 83, the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the common market in accordance with the law of their country and with the provisions of Article 81, in particular paragraph 3, and of Article 82.

ARTICLE 85 (ex Article 89)

1. Without prejudice to Article 84, the Commission shall ensure the application of the principles laid down in Articles 81 and 82. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, who shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.

ARTICLE 86 (ex Article 90)

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

SECTION 2

AIDS GRANTED BY STATES

ARTICLE 87 (ex Article 92)

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in

any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

ARTICLE 88 (ex Article 93)

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 87, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 226 and 227, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 87 or from the regulations provided for in Article 89, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

ARTICLE 89 (ex Article 94)

The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 87 and 88 and may in particular determine the conditions in which Article 88(3) shall apply and the categories of aid exempted from this procedure.

CHAPTER 2

TAX PROVISIONS

ARTICLE 90 (ex Article 95)

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

ARTICLE 91 (ex Article 96)

Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

ARTICLE 92 (ex Article 98)

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the measures contemplated have been previously approved for a limited period by the Council acting by a qualified majority on a proposal from the Commission.

ARTICLE 93 (ex Article 99)

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market within the time-limit laid down in Article 14.

CHAPTER 3

APPROXIMATION OF LAWS

ARTICLE 94 (ex Article 100)

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.

ARTICLE 95 (ex Article 100a)

1. By way of derogation from Article 94 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in **Clause 21 of the Basic Treaty** Article 14. The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

4. If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.

9. By way of derogation from the procedure laid down in Articles 226 and 227, the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 30, provisional measures subject to a Community control procedure.

ARTICLE 96 (ex Article 101)

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the common market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in an agreement eliminating the distortion in question, the Council shall, on a proposal from the Commission, acting by a qualified majority, issue the necessary directives. The Commission and the Council may take any other appropriate measures provided for in this Treaty.

ARTICLE 97 (ex Article 102)

1. Where there is a reason to fear that the adoption or amendment of a provision laid down by law, regulation or administrative action may cause distortion within the meaning of Article 96, a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall recommend to the States concerned such measures as may be appropriate to avoid the distortion in question.

2. If a State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, in pursuance of Article 96, to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, the provisions of Article 96 shall not apply.

TITLE VII (ex Title VI)

ECONOMIC AND MONETARY POLICY

CHAPTER 1

ECONOMIC POLICY

ARTICLE 98 (ex Article 102a)

Replaced by Clause 32 of the Basic Treaty

ARTICLE 99 (ex Article 103)

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of **Clause 32 of the Basic Treaty** (Article 98).
2. The Council shall, acting by a qualified majority on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Community, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Community.

On the basis of this conclusion, the Council shall, acting by a qualified majority, adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Community as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Council may, acting by a qualified majority on a recommendation from the Commission, make the necessary recommendations to the Member State concerned. The Council may, acting by a qualified majority on a proposal from the Commission, decide to make its recommendations public.

The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

5. The Council, acting in accordance with the procedure referred to in Article 252, may adopt detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4 of this Article.

ARTICLE 100 (ex Article 103a)

1. Without prejudice to any other procedures provided for in this Treaty, the Council may, acting unanimously on a proposal from the Commission, decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products.
2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by

exceptional occurrences beyond its control, the Council may, acting unanimously on a proposal from the Commission, grant, under certain conditions, Community financial assistance to the Member State concerned. Where the severe difficulties are caused by natural disasters, the Council shall act by qualified majority. The President of the Council shall inform the European Parliament of the decision taken.

ARTICLE 101 (ex Article 104)

1. Overdraft facilities or any other type of credit facility with the ECB or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

ARTICLE 102 (ex Article 104a)

1. Any measure, not based on prudential considerations, establishing privileged access by Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.

2. The Council, acting in accordance with the procedure referred to in Article 252, shall, before 1 January 1994, specify definitions for the application of the prohibition referred to in paragraph 1.

ARTICLE 103 (ex Article 104b)

1. The Community shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

2. If necessary, the Council, acting in accordance with the procedure referred to in Article 252, may specify definitions for the application of the prohibition referred to in Article 101 and in this Article.

ARTICLE 104 (ex Article 104c)

1. Member States shall avoid excessive government deficits.

2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:

- (a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:
 - either the ratio has declined substantially and continuously and reached a level that comes close to the reference value;
 - or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;
- (b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to this Treaty.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Committee provided for in Article 114 shall formulate an opinion on the report of the Commission.

5. If the Commission considers that an excessive deficit in a Member State exists or may occur, the Commission shall address an opinion to the Council.

6. The Council shall, acting by a qualified majority on a recommendation from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.

7. Where the existence of an excessive deficit is decided according to paragraph 6, the Council shall make recommendations to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to the provisions of paragraph 8, these recommendations shall not be made public.

8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time-limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation. In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. The rights to bring actions provided for in Articles 226 and 227 may not be exercised within the framework of paragraphs 1 to 9 of this Article.

11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

- to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities;
- to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned;
- to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Community until the excessive deficit has, in the view of the Council, been corrected;
- to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the decisions taken.

12. The Council shall abrogate some or all of its decisions referred to in paragraphs 6 to 9 and 11 to the extent that the excessive deficit in the Member State concerned has, in the view of the Council, been corrected. If the Council has previously made public recommendations, it shall, as soon as the decision under paragraph 8 has been abrogated, make a public statement that an excessive deficit in the Member State concerned no longer exists.

13. When taking the decisions referred to in paragraphs 7 to 9, 11 and 12, the Council shall act on a

recommendation from the Commission by a majority of two-thirds of the votes of its members weighted in accordance with Article 205(2), excluding the votes of the representative of the Member State concerned.

14. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure annexed to this Treaty.

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the ECB, adopt the appropriate provisions which shall then replace the said Protocol.

Subject to the other provisions of this paragraph, the Council shall, before 1 January 1994, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, lay down detailed rules and definitions for the application of the provisions of the said Protocol.

CHAPTER 2

MONETARY POLICY

ARTICLE 105 (ex Article 105)

1. Replaced by Clause 33 of the Basic Treaty

2. Replaced by Clause 79, § 1 of the Basic Treaty

3. Replaced by Clause 79, § 1 of the Basic Treaty

4. The ECB shall be consulted:

- on any proposed Community act in its fields of competence;
- by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 107(6).

The ECB may submit opinions to the appropriate Community institutions or bodies or to national authorities on matters in its fields of competence.

5. The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

6. The Council may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

ARTICLE 106 (ex Article 105a)

1. Replaced by Clause 79, § 2 of the Basic Treaty.

2. First sentence replaced by Clause 79, § 2 of the Basic Treaty.

The Council may, acting in accordance with the procedure referred to in Article 252 and after consulting the ECB, adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Community.

ARTICLE 107 (ex Article 106)

1. Replaced by Clause 76 of the Basic Treaty

2. Replaced by Clause 76 of the Basic Treaty

3. Replaced by Clause 76 of the Basic Treaty

4. The Statute of the ESCB is laid down in a Protocol annexed to this Treaty.

5. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission or unanimously on a proposal from the Commission and after consulting the ECB. In either case, the assent of the European Parliament shall be required.

6. The Council, acting by a qualified majority either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB.

ARTICLE 108 (ex Article 107)

Replaced by Clause 78 of the Basic Treaty

ARTICLE 109 (ex Article 108)

Each Member State shall ensure, at the latest at the date of the establishment of the ESCB, that its national legislation including the statutes of its national central bank is compatible with this Treaty and the Statute of the ESCB.

ARTICLE 110 (ex Article 108a)

1. In order to carry out the tasks entrusted to the ESCB, the ECB shall, in accordance with the provisions of this Treaty and under the conditions laid down in the Statute of the ESCB:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and in cases which shall be laid down in the acts of the Council referred to in Article 107(6);
- take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and the Statute of the ESCB;
- make recommendations and deliver opinions.

2. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

Recommendations and opinions shall have no binding force.

A decision shall be binding in its entirety upon those to whom it is addressed.

Clause 14 of the Basic Treaty and Articles 253 to 256 shall apply to regulations and decisions adopted by the ECB.

The ECB may decide to publish its decisions, recommendations and opinions.

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 107(6), the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

ARTICLE 111 (Article 109)

1. By way of derogation from Article 300, the Council may, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure in paragraph 3 for determining the arrangements, conclude formal agreements on an exchange-rate system for the ECU in relation to non-Community currencies. The Council may, acting by a qualified majority on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the ECU within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the ECU central rates.

2. In the absence of an exchange-rate system in relation to one or more non-Community currencies as referred to in paragraph 1, the Council, acting by a qualified majority either on a recommendation from the Commission and after consulting the ECB or on a recommendation from the ECB, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

3. By way of derogation from Article 300, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Community with one or more States or international organisations, the Council, acting by a qualified majority on a recommendation from the Commission and after consulting the ECB, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Community expresses a single position. The Commission shall be fully associated with the negotiations.

Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Community, on the ECB and on Member States.

4. Subject to paragraph 1, the Council shall, on a proposal from the Commission and after consulting the ECB, acting by a qualified majority decide on the position of the Community at international level as regards issues of particular relevance to economic and monetary union and, acting unanimously, decide its representation in compliance with the allocation of powers laid down in **Clauses 33 and 79, § 1 of the Basic Treaty and in Articles 99 and 105.**

5. Without prejudice to Community competence and Community agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

CHAPTER 3

INSTITUTIONAL PROVISIONS

ARTICLE 112 (ex Article 109a)

Replaced by Clause 77 of the Basic Treaty

ARTICLE 113 (ex Article 109b)

1. The President of the Council and a member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the ECB **referred to in Clause 77 of the Basic Treaty.**

The President of the Council may submit a motion for deliberation to the Governing Council of the ECB.

2. The President of the ECB shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

3. The ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the ECB shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the ECB and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

ARTICLE 114 (ex Article 109c)

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, a Monetary Committee with advisory status is hereby set up.

It shall have the following tasks:

- to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission;
- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;
- without prejudice to Article 207, to contribute to the preparation of the work of the Council referred to in Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 116(2), 117(6), 119, 120, 121(2) and 122(1);
- to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States and the Commission shall each appoint two members of the Monetary Committee.

2. At the start of the third stage, an Economic and Financial Committee shall be set up. The Monetary Committee provided for in paragraph 1 shall be dissolved.

The Economic and Financial Committee shall have the following tasks:

- to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions;
- to keep under review the economic and financial situation of the Member States and of the Community and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions;
- without prejudice to Article 207, to contribute to the preparation of the work of the Council referred to in Articles 59, 60, 99(2), (3), (4) and (5), 100, 102, 103, 104, 105(6), 106(2), 107(5) and (6), 111, 119, 120(2) and (3), 122(2), 123(4) and (5), and to carry out other advisory and preparatory tasks assigned to it by the Council;
- to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of this Treaty and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the ECB shall each appoint no more than two members of the Committee.

3. The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the ECB and the Committee referred to in this Article, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.

4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Articles 122 and 123, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

ARTICLE 115 (ex Article 109d)

For matters within the scope of Articles 99(4), 104 with the exception of paragraph 14, 111, 121, 122 and 123(4) and (5), the Council or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council without delay.

CHAPTER 4

TRANSITIONAL PROVISIONS⁴

ARTICLE 116 (ex Article 109e) to ARTICLE 124 (ex Article 109 m)

TITLE VIII (ex Title VIa)

EMPLOYMENT

ARTICLE 125 (ex Article 109n)

Replaced by Clause 34 of the Basic Treaty

ARTICLE 126 (ex Article 109o)

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in **Clause 34 of the Basic Treaty** (Article 125) in a way consistent with the broad guidelines of the economic policies of the Member States and of the Community adopted pursuant to Article 99(2).

2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 128.

ARTICLE 127 (ex Article 109p)

1. The Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.

2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities.

ARTICLE 128 (ex Article 109q)

1. The European Council shall each year consider the employment situation in the Community and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.

2. On the basis of the conclusions of the European Council, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Economic and Social

⁴ . Not reproduced. Given that those provisions are obsolete, we could suggest to repeal them. If we were to keep them, it seems that the adaptation of a few cross references in these “transitional provisions” is not necessary.

Committee, the Committee of the Regions and the Employment Committee referred to in Article 130, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 99(2).

3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, acting by a qualified majority on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.

5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Community and on the implementation of the guidelines for employment.

ARTICLE 129 (ex Article 109r)

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.

Those measures shall not include harmonisation of the laws and regulations of the Member States.

ARTICLE 130 (ex Article 109s)

The Council, after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

- to monitor the employment situation and employment policies in the Member States and the Community;
- without prejudice to Article 207, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 128.

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

TITLE IX (ex Title VII)

COMMON COMMERCIAL POLICY

ARTICLE 131 (ex Article 110)

Replaced by Clause 30, § 1 of the Basic Treaty

ARTICLE 132 (ex Article 112)

1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.

On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.

2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, insofar as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.

ARTICLE 133 (ex Article 113)

1. Replaced by Clause 30, § 2 of the Basic Treaty

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

5. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of **Clause 30, § 2 of the Basic Treaty and of paragraphs 2 to 4** to international negotiations and agreements on services and intellectual property insofar as they are not covered by **the said Clause and paragraphs**.

ARTICLE 134 (ex Article 115)

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.

In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.

In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

TITLE X (ex Title VIIa)

CUSTOMS COOPERATION

ARTICLE 135 (ex Article 116)

Within the scope of application of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. These measures shall not concern the application of national criminal law or the national administration of justice.

TITLE XI (ex Title VIII)

SOCIAL POLICY, EDUCATION, VOCATIONAL TRAINING AND YOUTH

CHAPTER 1

SOCIAL PROVISIONS

ARTICLE 136 (ex Article 117)

Replaced by Clause 35 of the Basic Treaty

ARTICLE 137 (ex Article 118)

1. With a view to achieving the objectives of **Clause 35 of the Basic Treaty** (Article 136), the Community shall support and complement the activities of the Member States in the following fields:

- improvement in particular of the working environment to protect workers' health and safety;
- working conditions;
- the information and consultation of workers;
- the integration of persons excluded from the labour market, without prejudice to Article 150;
- equality between men and women with regard to labour market opportunities and treatment at work.

2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting in accordance with the same procedure, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion.

3. However, the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions in the following areas:

- social security and social protection of workers;
- protection of workers where their employment contract is terminated;
- representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;
- conditions of employment for third-country nationals legally residing in Community territory;
- financial contributions for promotion of employment and job-creation, without prejudice to the provisions relating to the Social Fund.

4. A Member State may entrust management and labour, at their joint request, with the implementation of

directives adopted pursuant to paragraphs 2 and 3.

In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

5. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

6. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

ARTICLE 138 (ex Article 118a)

1. The Commission shall have the task of promoting the consultation of management and labour at Community level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Community action.

3. If, after such consultation, the Commission considers Community action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

4. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in Article 139. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

ARTICLE 139 (ex Article 118b)

1. Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

2. Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

The Council shall act by qualified majority, except where the agreement in question contains one or more provisions relating to one of the areas referred to in Article 137(3), in which case it shall act unanimously.

ARTICLE 140 (ex Article 118c)

With a view to achieving the objectives of **Clause 35 of the Basic Treaty** (Article 136) and without prejudice to the other provisions of this Treaty, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this chapter, particularly in matters relating to:

- employment;
- labour law and working conditions;
- basic and advanced vocational training;
- social security;
- prevention of occupational accidents and diseases;

- occupational hygiene;
- the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

ARTICLE 141 (ex Article 119)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
 - (b) that pay for work at time rates shall be the same for the same job.
3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.
 4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

ARTICLE 142 (ex Article 119a)

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

ARTICLE 143 (ex Article 120)

The Commission shall draw up a report each year on progress in achieving the objectives of **Clause 35 of the Basic Treaty** (Article 136), including the demographic situation in the Community. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

The European Parliament may invite the Commission to draw up reports on particular problems concerning the social situation.

ARTICLE 144 (ex Article 121)

The Council may, acting unanimously and after consulting the Economic and Social Committee, assign to the Commission tasks in connection with the implementation of common measures, particularly as regards social security for the migrant workers referred to in **Clause 23 of the Basic Treaty and in Articles 40 to 42**.

ARTICLE 145 (ex Article 122)

The Commission shall include a separate chapter on social developments within the Community in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

CHAPTER 2

THE EUROPEAN SOCIAL FUND

ARTICLE 146 (ex Article 123)

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Community, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

ARTICLE 147 (ex Article 124)

The Fund shall be administered by the Commission.

The Commission shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of governments, trade unions and employers' organisations.

ARTICLE 148 (ex Article 125)

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing decisions relating to the European Social Fund.

CHAPTER 3

EDUCATION, VOCATIONAL TRAINING AND YOUTH

ARTICLE 149 (ex Article 126)

1. Replaced by Clause 36, § 1 of the Basic Treaty

2. Pursuant to Clause 36, § 1 of the Basic Treaty, community action related to education shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
- encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;
- promoting cooperation between educational establishments;
- developing exchanges of information and experience on issues common to the education systems of the Member States;
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors;
- encouraging the development of distance education.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to **Clause 36, § 1 of the Basic Treaty and** in this Article, the Council:

- acting in accordance with the procedure referred to in Article 251, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States;
- acting by a qualified majority on a proposal from the Commission, shall adopt recommendations.

ARTICLE 150 (ex Article 127)

1. Replaced by Clause 36, § 2 of the Basic Treaty

2. Pursuant to **Clause 36, § 2 of the Basic Treaty**, community action **related to vocational training policy** shall aim to:

- facilitate adaptation to industrial changes, in particular through vocational training and retraining;
- improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;
- facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people;
- stimulate cooperation on training between educational or training establishments and firms;
- develop exchanges of information and experience on issues common to the training systems of the Member States.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.

4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt measures to contribute to the achievement of the objectives referred to to **Clause 36, § 2 of the Basic Treaty and** in this Article, excluding any harmonisation of the laws and regulations of the Member States.

TITLE XII (ex Title IX)

CULTURE

ARTICLE 151 (ex Article 128)

1. Replaced by Clause 37, § 1 of the Basic Treaty

2. Pursuant to **Clause 37, § 1 of the Basic Treaty**, action by the Community **in the field of culture** shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples;
- conservation and safeguarding of cultural heritage of European significance;
- non-commercial cultural exchanges;

- artistic and literary creation, including in the audiovisual sector.
3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. *Replaced by Clause 37, § 2 of the Basic Treaty*

5. In order to contribute to the achievement of the objectives referred to in **Clause 37 of the Basic Treaty** and in this Article, the Council:

- acting in accordance with the procedure referred to in Article 251 and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedure referred to in Article 251;
- acting unanimously on a proposal from the Commission, shall adopt recommendations.

TITLE XIII (ex Title X)

PUBLIC HEALTH

ARTICLE 152 (ex Article 129)

1. *Replaced by Clause 39 of the Basic Treaty*

2. **In the field of public health**, (t)he Community shall encourage cooperation between the Member States in the areas referred to in **Clause 39 of the Basic Treaty and in this Article** and, if necessary, lend support to their action.

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in **Clause 39 of the Basic Treaty** (paragraph 1). The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting:

- (a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;
- (b) by way of derogation from Article 37, measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;
- (c) incentive measures designed to protect and improve human health, excluding any harmonisation of the laws and regulations of the Member States.

The Council, acting by a qualified majority on a proposal from the Commission, may also adopt recommendations for the purposes set out in **Clause 39 of the Basic Treaty** and in this Article.

5. Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

TITLE XIV (ex Title XI)

CONSUMER PROTECTION

ARTICLE 153 (ex Article 129a)

1. Replaced by Clause 40 of the Basic Treaty

2. Replaced by Clause 40 of the Basic Treaty

3. The Community shall contribute to the attainment of the objectives **of consumer protection** referred to **Clause 40 of the Basic Treaty** (in paragraph 1) through:

- (a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;
- (b) measures which support, supplement and monitor the policy pursued by the Member States.

4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).

5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.

TITLE XV (ex Title XII)

TRANS-EUROPEAN NETWORKS

ARTICLE 154 (ex Article 129b)

1. Replaced by Clause 41 of the Basic Treaty

2. Within the framework of a system of open and competitive markets, action by the Community **in establishing and developing trans-European networks** shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Community.

ARTICLE 155 (ex Article 129c)

1. In order to achieve the objectives referred to in **Clause 41 of the Basic Treaty** and in Article 154, the Community:

- shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;
- shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;
- may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Community may also contribute, through the Cohesion Fund set up pursuant to Article 161, to the financing of specific projects in Member States in the area of transport infrastructure.

The Community's activities shall take into account the potential economic viability of the projects.

2. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in **Clause 41 of the Basic Treaty and in Article 154**. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

3. The Community may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

ARTICLE 156 (ex Article 129d)

The guidelines and other measures referred to in Article 155(1) shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

TITLE XVI (ex Title XIII)

INDUSTRY

ARTICLE 157 (ex Article 130)

1. Replaced by Clause 42, § 1 of the Basic Treaty

2. In pursuance of the objectives set out in Clause 42, § 1 of the Basic Treaty concerning the Community's industry, (T)the Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination.

3. Sentences 1 and 3 replaced by Clause 42, § 2 of the Basic Treaty

The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in **Clause 42, § 1 of the Basic Treaty** (paragraph 1)

TITLE XVII (ex Title XIV)

ECONOMIC AND SOCIAL COHESION

ARTICLE 158 (ex Article 130a)

Replaced by Clause 43, § 1 of the Basic Treaty

ARTICLE 159 (ex Article 130b)

Replaced by Clause 43, § 2 of the Basic Treaty

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in **Clause 43, § 2** and this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.

ARTICLE 160 (ex Article 130c)

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

ARTICLE 161 (ex Article 130d)

Without prejudice to Article 162, the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The Council, acting by the same procedure, shall also define the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments.

A Cohesion Fund set up by the Council in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

ARTICLE 162 (ex Article 130e)

Implementing decisions relating to the European Regional Development Fund shall be taken by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles 37 and 148 respectively shall continue to apply.

TITLE XVIII (ex Title XV)

RESEARCH AND TECHNOLOGICAL DEVELOPMENT

ARTICLE 163 (ex Article 130f)

1. Replaced by Clause 44 of the Basic Treaty

2. Replaced by Clause 44 of the Basic Treaty

3. All Community activities under this Treaty in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with **Clause 44 of the Basic Treaty** and the provisions of this Title.

ARTICLE 164 (ex Article 130g)

In pursuing these objectives, the Community shall carry out the following activities, complementing the activities carried out in the Member States:

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of Community research, technological development and

demonstration with third countries and international organisations;

- (c) dissemination and optimisation of the results of activities in Community research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the Community.

ARTICLE 165 (ex Article 130h)

1. The Community and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and Community policy are mutually consistent.
2. In close cooperation with the Member State, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

ARTICLE 166 (ex Article 130i)

1. A multiannual framework programme, setting out all the activities of the Community, shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee.

The framework programme shall:

- establish the scientific and technological objectives to be achieved by the activities provided for in Article 164 and fix the relevant priorities;
 - indicate the broad lines of such activities;
 - fix the maximum overall amount and the detailed rules for Community financial participation in the framework programme and the respective shares in each of the activities provided for.
2. The framework programme shall be adapted or supplemented as the situation changes.
 3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.
 4. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the specific programmes.

ARTICLE 167 (ex Article 130j)

For the implementation of the multiannual framework programme the Council shall:

- determine the rules for the participation of undertakings, research centres and universities;
- lay down the rules governing the dissemination of research results.

ARTICLE 168 (ex Article 130k)

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible Community participation.

The Council shall adopt the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States.

ARTICLE 169 (ex Article 130l)

In implementing the multiannual framework programme the Community may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

ARTICLE 170 (ex Article 130m)

In implementing the multiannual framework programme the Community may make provision for cooperation in Community research, technological development and demonstration with third countries or international organisations.

The detailed arrangements for such cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

ARTICLE 171 (ex Article 130n)

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

ARTICLE 172 (ex Article 130o)

The Council, acting by qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171.

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 167, 168 and 169. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.

ARTICLE 173 (ex Article 130p)

At the beginning of each year the Commission shall send a report to the European Parliament and the Council. The report shall include information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year.

TITLE XIX (ex Title XVI)

ENVIRONMENT

ARTICLE 174 (ex Article 130r)

1. Community policy on the environment shall contribute to pursuit of the objectives **set out in Clause 38 of the Basic Treaty**.

2. In the context **provided for in Clause 38 of the Basic Treaty**, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure.

3. In preparing its policy on the environment, the Community shall take account of:

- available scientific and technical data;
- environmental conditions in the various regions of the Community;
- the potential benefits and costs of action or lack of action;
- the economic and social development of the Community as a whole and the balanced development of its

regions.

4. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

ARTICLE 175 (ex Article 130s)

1. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Community in order to achieve the objectives referred to **in Clause 38 of the Basic Treaty**.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

- provisions primarily of a fiscal nature;
- measures concerning town and country planning, land use with the exception of waste management and measures of a general nature, and management of water resources;
- measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the preceding subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.

3. In other areas, general action programmes setting out priority objectives to be attained shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the measures necessary for the implementation of these programmes.

4. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of:

- temporary derogations, and/or
- financial support from the Cohesion Fund set up pursuant to Article 161.

ARTICLE 176 (ex Article 130t)

The protective measures adopted pursuant to Article 175 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.

TITLE XX (ex Title XVII)

DEVELOPMENT COOPERATION

ARTICLE 177 (ex Article 130u)

1. Replaced by Clause 45, § 1 of the Basic Treaty

2. Replaced by Clause 45, § 1 of the Basic Treaty

3. The Community and the Member States shall comply, **in the sphere of development cooperation**, with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

ARTICLE 178 (ex Article 130v)

Replaced by Clause 45, § 2 of the Basic Treaty.

ARTICLE 179 (ex Article 130w)

1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in **Clause 45 of the Basic Treaty** (Article 177). Such measures may take the form of multiannual programmes.

2. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.

ARTICLE 180 (ex Article 130x)

1. The Community and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Community aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

ARTICLE 181 (ex Article 130y)

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

PART FOUR

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

ARTICLE 182 (ex Article 131)

The Member States agree to associate with the Community the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These countries and territories (hereinafter called the "countries and territories") are listed in Annex II to this Treaty.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.

In accordance with the principles set out in the Preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

ARTICLE 183 (ex Article 132)

Association shall have the following objectives.

- (1) Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this Treaty.
- (2) Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
- (3) The Member States shall contribute to the investments required for the progressive development of these countries and territories.
- (4) For investments financed by the Community, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.
- (5) In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 187.

ARTICLE 184 (ex Article 133)

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of this Treaty.

2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with the provisions of Article 25.

3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the preceding subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.

5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

ARTICLE 185 (ex Article 134)

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable,

when the provisions of Article 184(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

ARTICLE 186 (ex Article 135)

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be governed by agreements to be concluded subsequently with the unanimous approval of Member States.

ARTICLE 187 (ex Article 136)

The Council, acting unanimously, shall, on the basis of the experience acquired under the association of the countries and territories with the Community and of the principles set out in this Treaty, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the Community.

ARTICLE 188 (ex Article 136a)

The provisions of Articles 182 to 187 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to this Treaty.

PART FIVE
INSTITUTIONS OF THE COMMUNITY

TITLE I
PROVISIONS GOVERNING THE INSTITUTIONS

CHAPTER 1
THE INSTITUTIONS

SECTION 1
THE EUROPEAN PARLIAMENT

ARTICLE 189 (ex Article 137)

Replaced by Clauses 53 and 56, §§ 1 and 3 of the Basic Treaty

ARTICLE 190 (ex Article 138)

1. Replaced by Clause 56, § 1 of the Basic Treaty

2. The number of representatives **in the European Parliament** elected in each Member State shall be as follows:

Belgium	25
Denmark	16
Germany	99
Greece	25
Spain	64
France	87
Ireland	15
Italy	87
Luxembourg	6
Netherlands	31
Austria	21
Portugal	25
Finland	16
Sweden	22
United Kingdom	87

In the event of amendments to this paragraph, **Clause 56, § 3 of the Basic Treaty shall apply.**

3. Representatives shall be elected for a term of five years.

4. Replaced by Clause 56 of the Basic Treaty

5. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members.

ARTICLE 191 (ex Article 138a)

Replaced by Clause 9, § 2 of the Basic Treaty

ARTICLE 192 (ex Article 138b)

Replaced by Clause 57, § 1 of the Basic Treaty

ARTICLE 193 (ex Article 138c)

In the course of its duties, the European Parliament may, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.

ARTICLE 194 (ex Article 138d)

Replaced by Clause 11 of the Basic Treaty

ARTICLE 195 (ex Article 138e)

1. The European Parliament shall appoint an Ombudsman empowered to receive complaints **referred to in Clause 12 of the Basic Treaty**.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.

ARTICLE 196 (ex Article 139)

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

The European Parliament may meet in extraordinary session at the request of a majority of its Members or at the

request of the Council or of the Commission.

ARTICLE 197 (ex Article 140)

Paragraph 1 replaced by Clause 56, § 4 of the Basic Treaty

Members of the Commission may attend all meetings **of the European Parliament** and shall, at their request, be heard on behalf of the Commission.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its Rules of Procedure.

ARTICLE 198 (ex Article 141)

Paragraph 1 replaced by Clause 59 of the Basic Treaty

The Rules of Procedure shall determine the quorum **for voting in the European Parliament**.

ARTICLE 199 (ex Article 142)

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

The proceedings of the European Parliament shall be published in the manner laid down in its Rules of Procedure.

ARTICLE 200 (ex Article 143)

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

ARTICLE 201 (ex Article 144)

Replaced by Clause 58 of the Basic Treaty

SECTION 2

THE COUNCIL

ARTICLE 202 (ex Article 145)

Replaced by Clause 61, § 1 of the Basic Treaty

ARTICLE 203 (ex Article 146)

Replaced by Clause 60 of the Basic Treaty

ARTICLE 204 (ex Article 147)

The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission.

ARTICLE 205 (ex Article 148)

1. Replaced by Clause 63, § 1 of the Basic Treaty

2. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows:

Belgium	5
Denmark	3
Germany	10
Greece	5
Spain	8
France	10
Ireland	3
Italy	10
Luxembourg	2
Netherlands	5
Austria	4
Portugal	5
Finland	3
Sweden	4
United Kingdom	10

For their adoption, acts of the Council shall require at least:

- 62 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,
- 62 votes in favour, cast by at least 10 members, in other cases.

3. Replaced by Clause 63, 4 of the Basic Treaty

ARTICLE 206 (ex Article 150)

Where a vote is taken, any member of the Council may also act on behalf of not more than one other member.

ARTICLE 207 (ex Article 151)

1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General, High Representative for the common foreign and security policy, who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat. The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting unanimously.

The Council shall decide on the organisation of the General Secretariat.

3. The Council shall adopt its Rules of Procedure.

For the purpose of applying Article 255(3), the Council shall elaborate in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph, the Council shall define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

ARTICLE 208 (ex Article 152)

The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.

ARTICLE 209 (ex Article 153)

The Council shall, after receiving an opinion from the Commission, determine the rules governing the committees provided for in this Treaty.

ARTICLE 210 (ex Article 154)

The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President and Members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.

SECTION 3

THE COMMISSION

ARTICLE 211 (ex Article 155)

Replaced by Clause 67, § 1 of the Basic Treaty

ARTICLE 212 (ex Article 156)

The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Community.

ARTICLE 213 (ex Article 157)

1. The Commission shall consist of 20 Members, who shall be chosen **in accordance with Clause 64, § 1 of the Basic Treaty.**

The number of Members of the Commission may be altered by the Council, acting unanimously.

Paragraphs 2 and 3 replaced by Clause 64, § 1 of the Basic Treaty

2. ***Paragraphs 1 and 2 replaced by Clause 64, § 1 of the Basic Treaty***

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 216 or deprived of his right to a pension or other benefits in its stead.

ARTICLE 214 (ex Article 158)

Replaced by Clause 65 of the Basic Treaty

ARTICLE 215 (ex Article 159)

Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired.

The vacancy thus caused shall be filled for the remainder of the Member's term of office by a new Member appointed by common accord of the governments of the Member States. The Council may, acting unanimously, decide that such a vacancy need not be filled.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in **Clause 65, § 2** (Article 214(2)) shall be applicable for the replacement of the President.

Save in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced.

ARTICLE 216 (ex Article 160)

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council or the Commission, compulsorily retire him.

ARTICLE 217 (ex Article 161)

Replaced by Clause 66 of the Basic Treaty

ARTICLE 218 (ex Article 162)

1. The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation.

2. The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate in accordance with the provisions of this Treaty. It shall ensure that these rules are published.

ARTICLE 219 (ex Article 163)

Paragraph 1 replaced by Clause 66 of the Basic Treaty

Paragraph 2 replaced by Clause 68 of the Basic Treaty

A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.

SECTION 4

THE COURT OF JUSTICE

ARTICLE 220 (ex Article 164)

Replaced by Clause 70 of the Basic Treaty

ARTICLE 221 (ex Article 165)

The Court of Justice shall consist of 15 Judges.

The Court of Justice shall sit in plenary session. It may, however, form chambers, each consisting of three, five or seven Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with rules laid down for these purposes.

The Court of Justice shall sit in plenary session when a Member State or a Community institution that is a party to the proceedings so requests.

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Judges and make the necessary adjustments to the second and third paragraphs of this Article and to the second paragraph of Article 223.

ARTICLE 222 (ex Article 166)

The Court of Justice shall be assisted by eight Advocates-General. However, a ninth Advocate-General shall be appointed as from 1 January 1995 until 6 October 2000.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it in **Clause 70 of the Basic Treaty** (Article 220).

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Advocates-General and make the necessary adjustments to the third paragraph of Article 223.

ARTICLE 223 (ex Article 167)

Paragraph 1 replaced by Clause 69, § 2 of the Basic Treaty

Every three years there shall be a partial replacement of the Judges. Eight and seven Judges shall be replaced alternately.

Every three years there shall be a partial replacement of the Advocates-General. Four Advocates-General shall be replaced on each occasion.

Retiring Judges and Advocates-General shall be eligible for reappointment.

Paragraph 5 replaced by Clause 69, § 3 of the Basic Treaty

ARTICLE 224 (ex Article 168)

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

ARTICLE 225 (ex Article 168a)

1. Replaced by Clause 71, § 1 of the Basic Treaty

2. At the request of the Court of Justice and after consulting the European Parliament and the Commission, the Council, acting unanimously, shall determine the classes of action or proceeding referred to **Clause 71, § 1 of the Basic Treaty** and the composition of the Court of First Instance and shall adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to the Court of First Instance.

3. Replaced by Clause 71, § 2 of the Basic Treaty

4. The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.

ARTICLE 226 (ex Article 169)

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

ARTICLE 227 (ex Article 170)

A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty

may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

ARTICLE 228 (ex Article 171)

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken such measures it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgment of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court's judgment within the time-limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 227.

ARTICLE 229 (ex Article 172)

Regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of this Treaty, may give the Court of Justice unlimited jurisdiction with regard to the penalties provided for in such regulations.

ARTICLE 230 (ex Article 173)

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

The Court of Justice shall have jurisdiction under the same conditions in actions brought by the European Parliament, by the Court of Auditors and by the ECB for the purpose of protecting their prerogatives.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

ARTICLE 231 (ex Article 174)

If the action is well founded, the Court of Justice shall declare the act concerned to be void.

In the case of a regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive.

ARTICLE 232 (ex Article 175)

Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.

The Court of Justice shall have jurisdiction, under the same conditions, in actions or proceedings brought by the ECB in the areas falling within the latter's field of competence and in actions or proceedings brought against the latter.

ARTICLE 233 (ex Article 176)

The institution or institutions whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 288.

This Article shall also apply to the ECB.

ARTICLE 234 (ex Article 177)

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

ARTICLE 235 (ex Article 178)

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in the

second paragraph of Article 288.

ARTICLE 236 (ex Article 179)

The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

ARTICLE 237 (ex Article 180)

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 226;
- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 230;
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 230, and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under this Treaty and the Statute of the ESCB. In this connection the powers of the Council of the ECB in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 226. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under this Treaty, that bank shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

ARTICLE 238 (ex Article 181)

The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law.

ARTICLE 239 (ex Article 182)

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of this Treaty if the dispute is submitted to it under a special agreement between the parties.

ARTICLE 240 (ex Article 183)

Save where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

ARTICLE 241 (ex Article 184)

Notwithstanding the expiry of the period laid down in the fifth paragraph of Article 230, any party may, in proceedings in which a regulation adopted jointly by the European Parliament and the Council, or a regulation of the Council, of the Commission, or of the ECB is at issue, plead the grounds specified in the second paragraph of Article 230 in order to invoke before the Court of Justice the inapplicability of that regulation.

ARTICLE 242 (ex Article 185)

Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be

suspended.

ARTICLE 243 (ex Article 186)

The Court of Justice may in any cases before it prescribe any necessary interim measures.

ARTICLE 244 (ex Article 187)

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article 256.

ARTICLE 245 (ex Article 188)

The Statute of the Court of Justice is laid down in a separate Protocol.

The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.

The Court of Justice shall adopt its Rules of Procedure. These shall require the unanimous approval of the Council.

SECTION 5

THE COURT OF AUDITORS

ARTICLE 246 (ex Article 188a)

Replaced by Clause 73, § 1 of the Basic Treaty

ARTICLE 247 (ex Article 188b)

1. The Court of Auditors shall consist of 15 Members.
2. ***Replaced by Clause 72, § 1 of the Basic Treaty***
3. ***Replaced by Clause 72, § 2 of the Basic Treaty***
4. ***Replaced by Clause 72, § 3 of the Basic Treaty***
5. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
6. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 7.
The vacancy thus caused shall be filled for the remainder of the Member's term of office.
Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.
7. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.
8. The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall

also, by the same majority, determine any payment to be made instead of remuneration.

9. The provisions of the Protocol on the privileges and immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the Members of the Court of Auditors.

ARTICLE 248 (ex Article 188c)

1. Replaced by Clause 73, § 2 of the Basic Treaty

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community, on the premises of any body which manages revenue or expenditure on behalf of the Community and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Community, any bodies managing revenue or expenditure on behalf of the Community, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Community expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Community expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Communities*.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Community.

It shall adopt its annual reports, special reports or opinions by a majority of its Members.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

CHAPTER 2

PROVISIONS COMMON TO SEVERAL INSTITUTIONS

ARTICLE 249 (ex Article 189)

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament

acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety upon those to whom it is addressed.

Recommendations and opinions shall have no binding force.

ARTICLE 250 (ex Article 189a)

Replaced by Clause 67, § 2 of the Basic Treaty

ARTICLE 251 (ex Article 189b)

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament,

- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act thus amended;
- if the European Parliament does not propose any amendments, may adopt the proposed act;
- shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

- (a) approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;
- (b) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;
- (c) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

4. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the

positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.

5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.

7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

ARTICLE 252 (ex Article 189c)

Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply:

- (a) The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.
- (b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

- (c) The European Parliament may, within the period of three months referred to in point (b), by an absolute majority of its component Members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

- (d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

- (e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

- (f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

- (g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.

ARTICLE 253 (ex Article 190)

Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.

ARTICLE 254 (ex Article 191)

1. Regulations, directives and decisions adopted in accordance with the procedure referred to in Article 251 shall be signed by the President of the European Parliament and by the President of the Council and published in the *Official Journal of the European Communities*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

2. Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the *Official Journal of the European Communities*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

3. Other directives, and decisions, shall be notified to those to whom they are addressed and shall take effect upon such notification.

ARTICLE 255 (ex Article 191a)

1. Replaced by Clause 14 of the Basic Treaty

2. General principles and limits on grounds of public or private interest governing (this) **the** right of access to documents **provided for in Clause 14** shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

ARTICLE 256 (ex Article 192)

Decisions of the Council or of the Commission which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

CHAPTER 3

THE ECONOMIC AND SOCIAL COMMITTEE

ARTICLE 257 (ex Article 193)

Replaced by Clauses 52, § 2 and 74, § 1 of the Basic Treaty

ARTICLE 258 (ex Article 194)

The number of members of the Economic and Social Committee shall be as follows:

Belgium	12
Denmark	9
Germany	24
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Luxembourg	6
Netherlands	12
Austria	12
Portugal	12
Finland	9
Sweden	12
United Kingdom	24

Paragraphs 2 and 3 replaced by Clause 74, § 2 of the Basic Treaty

The Council, acting by a qualified majority, shall determine the allowances of members of the Committee.

ARTICLE 259 (ex Article 195)

1. For the appointment of the members of the Committee, each Member State shall provide the Council with a list containing twice as many candidates as there are seats allotted to its nationals.

The composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity.

2. The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.

ARTICLE 260 (ex Article 196)

The Committee shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

ARTICLE 261 (ex Article 197)

The Committee shall include specialised sections for the principal fields covered by this Treaty.

These specialised sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee.

Subcommittees may also be established within the Committee to prepare on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration.

The Rules of Procedure shall lay down the methods of composition and the terms of reference of the specialised sections and of the subcommittees.

ARTICLE 262 (ex Article 198)

Paragraph 1 replaced by Clause 74, § 3 of the Basic Treaty

The Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee and that of the specialised section, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.

The Committee may be consulted by the European Parliament.

CHAPTER 4

THE COMMITTEE OF THE REGIONS

ARTICLE 263 (ex Article 198a)

Paragraph 1 replaced by Clauses 52, § 2 and 75, § 1 of the Basic Treaty

The number of members of the Committee of the Regions shall be as follows:

Belgium	12
Denmark	9
Germany	24
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Luxembourg	6
Netherlands	12
Austria	12
Portugal	12
Finland	9
Sweden	12
United Kingdom	24

Paragraphs 3 and 4 replaced by 75, § 2 of the Basic Treaty.

ARTICLE 264 (ex Article 198b)

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the Council or of the Commission. It may also meet on its own initiative.

ARTICLE 265 (ex Article 198c)

Paragraph 1 replaced by Clause 75, § 3 of the Basic Treaty

The Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives

notification to this effect. Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to **Clause 74, 3 of the Basic Treaty and Article 262**, the Committee of the Regions shall be informed by the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.

The Committee of the Regions may be consulted by the European Parliament.

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.

CHAPTER 5

THE EUROPEAN INVESTMENT BANK

ARTICLE 266 (ex Article 198d)

Paragraphs 1 and 2 replaced by Clause 80 of the Basic Treaty

The Statute of the European Investment Bank is laid down in a Protocol annexed to this Treaty.

ARTICLE 267 (ex Article 198e)

In order to accomplish its task pursuant to Clause 81, § 1 of the Basic Treaty, the European Investment Bank facilitates the financing of the following projects :

- (a) projects for developing less-developed regions;
- (b) projects for modernising or converting undertakings or for developing fresh activities called for by the progressive establishment of the common market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

Last paragraph replaced by Clause 81, § 2 of the Basic Treaty

TITLE II

FINANCIAL PROVISIONS

ARTICLE 268 (ex Article 199)

Replaced by Clause 82, § 1 of the Basic Treaty

ARTICLE 269 (ex Article 201)

Replaced by Clause 82, § 2 of the Basic Treaty

ARTICLE 270 (ex Article 201a)

Replaced by Clause 83 of the Basic Treaty

ARTICLE 271 (ex Article 202)

The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to Article 279 provide otherwise.

In accordance with conditions to be laid down pursuant to Article 279, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 279.

The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

ARTICLE 272 (ex Article 203)

1. The financial year shall run from 1 January to 31 December.
2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.

3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.

4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.

The European Parliament shall have the right to amend the draft budget, acting by a majority of its Members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If within this period the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

- (a) the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;
- (b) with regard to the proposed modifications:

- where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;
- where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;
- where, in pursuance of one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted.

If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.

6. Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its Members and three-fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted.

7. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.

8. However, the European Parliament, acting by a majority of its Members and two-thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.

9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:

- the trend, in terms of volume, of the gross national product within the Community;
- the average variation in the budgets of the Member States;

and

- the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the European Parliament, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its Members and three-fifths of the votes cast.

10. Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.

ARTICLE 273 (ex Article 204)

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one-twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 279; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one-twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one-twelfth.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one-twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

ARTICLE 274 (ex Article 205)

The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 279, transfer appropriations from one chapter to another or from one subdivision to another.

ARTICLE 275 (ex Article 205a)

The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community.

ARTICLE 276 (ex Article 206)

1. The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 275, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 248(1), second subparagraph and any relevant special reports by the Court of Auditors.

2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

ARTICLE 277 (ex Article 207)

The budget shall be drawn up in the unit of account determined in accordance with the provisions of the regulations made pursuant to Article 279.

ARTICLE 278 (ex Article 208)

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of this Treaty. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

ARTICLE 279 (ex Article 209)

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall:

- (a) make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Community's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;
- (c) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.

ARTICLE 280 (ex Article 209a)

1. Replaced by Clause 84, § 1 of the Basic Treaty

2. *Replaced by Clause 84, § 2 of the Basic Treaty*

3. *Replaced by Clause 84, § 3 of the Basic Treaty*

4. The Council, acting in accordance with the procedure referred to in Article 251, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law or the national administration of justice.

5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article.

PART SIX

GENERAL AND FINAL PROVISIONS

ARTICLE 281 (ex Article 210)

The Community shall have legal personality.

ARTICLE 282 (ex Article 211)

In each of the Member States, the Community shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Community shall be represented by the Commission.

ARTICLE 283 (ex Article 212)

The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of those Communities.

ARTICLE 284 (ex Article 213)

The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of this Treaty, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

ARTICLE 285 (ex Article 213a)

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Community.

2. The production of Community statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

ARTICLE 286 (ex Article 213b)

1. From 1 January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty.

2. Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate.

ARTICLE 287 (ex Article 214)

The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

ARTICLE 288 (ex Article 215)

The contractual liability of the Community shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The preceding paragraph shall apply under the same conditions to damage caused by the ECB or by its servants in the performance of their duties.

The personal liability of its servants towards the Community shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

ARTICLE 289 (ex Article 216)

The seat of the institutions of the Community shall be determined by common accord of the Governments of the Member States.

ARTICLE 290 (ex Article 217)

The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice, be determined by the Council, acting unanimously.

ARTICLE 291 (ex Article 218)

The Community shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Communities. The same shall apply to the European Central Bank, the European Monetary Institute, and the European Investment Bank.

ARTICLE 292 (ex Article 219)

Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein.

ARTICLE 293 (ex Article 220)

Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals:

- the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals;
- the abolition of double taxation within the Community;

- the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another, and the possibility of mergers between companies or firms governed by the laws of different countries;
- the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards.

ARTICLE 294 (ex Article 221)

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 48, without prejudice to the application of the other provisions of this Treaty.

ARTICLE 295 (ex Article 222)

This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.

ARTICLE 296 (ex Article 223)

1. The provisions of this Treaty shall not preclude the application of the following rules:

- (a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

ARTICLE 297 (ex Article 224)

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the common market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

ARTICLE 298 (ex Article 225)

If measures taken in the circumstances referred to in Articles 296 and 297 have the effect of distorting the conditions of competition in the common market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in the Treaty.

By way of derogation from the procedure laid down in Articles 226 and 227, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 296 and 297. The Court of Justice shall give its ruling in camera.

ARTICLE 299 (ex Article 227)

1. This Treaty shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

2. The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the present Treaty to those regions, including common policies.

The Council shall, when adopting the relevant measures referred to in the second subparagraph, take into account areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Community programmes.

The Council shall adopt the measures referred to in the second subparagraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Community legal order, including the internal market and common policies.

3. The special arrangements for association set out in Part Four of this Treaty shall apply to the overseas countries and territories listed in Annex II to this Treaty.

This Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

4. The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible.

5. The provisions of this Treaty shall apply to the Åland Islands in accordance with the provisions set out in Protocol No 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

6. Notwithstanding the preceding paragraphs:

- (a) this Treaty shall not apply to the Faeroe Islands;
- (b) this Treaty shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;
- (c) this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

ARTICLE 300 (ex Article 228)

1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.

In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.

2. Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be

decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.

By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement based on Article 310, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

The European Parliament shall be immediately and fully informed on any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement based on Article 310.

3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.

The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in **Clause 92 of the Basic Treaty** (Article 48 of the Treaty on European Union).

6. The Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with **Clause 92 of the Basic Treaty** (Article 48 of the Treaty on European Union).

7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.

ARTICLE 301 (ex Article 228a)

Where it is provided, in a common position or in a joint action adopted according to the provisions of **the Basic Treaty** relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.

ARTICLE 302 (ex Article 229)

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.

The Commission shall also maintain such relations as are appropriate with all international organisations.

ARTICLE 303 (ex Article 230)

The Community shall establish all appropriate forms of cooperation with the Council of Europe.

ARTICLE 304 (ex Article 231)

The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord.

ARTICLE 305 (ex Article 232)

1. The provisions of this Treaty shall not affect the provisions of the Treaty establishing the European Coal and Steel Community, in particular as regards the rights and obligations of Member States, the powers of the institutions of that Community and the rules laid down by that Treaty for the functioning of the common market in coal and steel.
2. The provisions of this Treaty shall not derogate from those of the Treaty establishing the European Atomic Energy Community.

ARTICLE 306 (ex Article 233)

The provisions of this Treaty shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of this Treaty.

ARTICLE 307 (ex Article 234)

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

ARTICLE 308 (ex Article 235)

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

ARTICLE 309 (ex Article 236)

1. Where a decision has been taken to suspend the voting rights of the representative of the government of a Member State in accordance with **Clause 91, § 2 of the Basic Treaty** (Article 7(2)), these voting rights shall also be suspended with regard to this Treaty.
2. Moreover, where the existence of a serious and persistent breach by a Member State of principles mentioned in **Clause 2, § 1 of the Basic Treaty** (Article 6(1) of the Treaty on European Union) has been determined in accordance with **Clause 91, § 1 of the Basic Treaty** (Article 7(1) of that Treaty), the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question. In doing so, the Council shall take into account the possible

consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken in accordance with paragraph 2 in response to changes in the situation which led to their being imposed.

4. When taking decisions referred to in paragraphs 2 and 3, the Council shall act without taking into account the votes of the representative of the government of the Member State in question. By way of derogation from Article 205(2) a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2).

This paragraph shall also apply in the event of voting rights being suspended in accordance with paragraph 1. In such cases, a decision requiring unanimity shall be taken without the vote of the representative of the government of the Member State in question.

ARTICLE 310 (ex Article 238)

Replaced by Clause 89 of the Basic Treaty

ARTICLE 311 (ex Article 239)

The protocols annexed to this Treaty by common accord of the Member States shall form an integral part thereof.

ARTICLE 312 (ex Article 240)

This Treaty is concluded for an unlimited period.

FINAL PROVISIONS

ARTICLE 313 (ex Article 247)

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic. This Treaty shall enter into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step. If, however, such deposit is made less than 15 days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month after the date of such deposit.

ARTICLE 314 (ex Article 248)

This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.

Pursuant to the Accession Treaties, the Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish versions of this Treaty shall also be authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Done at ...

ANNEXES

ANNEX I ⁵

LIST referred to in Article 32 of the Treaty

...

ANNEX II ⁶

OVERSEAS COUNTRIES AND TERRITORIES
to which the provisions of Part Four of the Treaty apply

⁵ . Not reproduced

⁶ . Not reproduced